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ABSTRACT

This manual is intended for use as a training publication and as a guide for investigators working wage compliance cases. The manual is divided into 10 sections. They contain a comprehensive review of the pay board regulations which remain in effect for those industries under mandatory control and serve as guidelines for the voluntary sector. To completely develop cases, investigators must have a thorough understanding of the computations prescribed by the pay board regulations and the criteria for exceptions. Exceptions and exemptions are discussed in chapter 1. Wage and salary investigation worksheet samples are presented in chapter 2. Computations are discussed in chapter 3. The manual also contains sections discussing Phase IV regulations, the November 1971 recodification, forms S82 and S102, and a sample case file and problems. (Author)

ED 091 577

Wage Compliance Handbook

Training 7606-03 (9-73)

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INTRODUCTION

I. PURPOSE

This manual is intended for use as a training publication and as a guide for Investigators working wage compliance cases.

The manual is divided into ten sections. They contain a comprehensive review of the Pay Board Regulations which remain in effect for those industries under mandatory control and serve as guidelines for the voluntary sector.

To completely develop cases, you must have a thorough understanding of the computations prescribed by the Pay Board Regulations and the criteria for exceptions. Computations are discussed in Chapter III. Exceptions and exemptions are discussed in Chapter I. The manual also contains sections discussing Phase IV Regulations, the November 1971 recodification, Forms S-82 and S-102, and a sample case file and problems.

Where appropriate, references are made throughout the text to the Regulations and various forms.

II. ROLE OF THE INVESTIGATOR

The role of the Investigator in Phase III has been expanded from that of Phase II. In addition to conducting investigations to determine compliance in the mandatory sector, you will conduct fact-finding investigations in the voluntary sector. Such investigations will be conducted at the request of the Cost of Living Council.

In these fact-finding investigations, you will determine how increases granted by firms relate to the General Standard. You will also determine if increases granted by the firm in excess of 5.5% would have been permitted under any of the statutory exceptions or if the increases can be justified on the basis of gross inequity or severe hardship.

Include these determinations in your report with a recommendation of action, if any, which the Cost of Living Council should take with respect to the increases granted.

Chapter I

GENERAL PAY STANDARD AND EXCEPTIONS

1.1 INTRODUCTION

Subpart B of the Pay Board Regulations sets forth the maximum permissible annual aggregate increase with respect to an appropriate employee unit. The General Pay Standard for such increases is established as 5.5%.

Certain statutory exceptions to the Standard permit increases of up to 7%. Other exceptions (tandem qualified benefits and governmental wage determinations) are provided which allow increases in excess of the Standard (without the 7% limitation) if certain criteria are met. Also, exceptions were granted by the Pay Board on a case-by-case basis to prevent severe hardships or gross inequities.

1.2 SMALL BUSINESS EXEMPTION

The Economic Stabilization Act provided that exemptions for small businesses be allowed as may be feasible without impending the accomplishment of the purposes of the Stabilization Program.

1.21 General Rule

The Pay adjustments of any firm with an average of 60 or fewer employees at specific calendar quarters, are exempt from wage controls after May 2, 1972. The exceptions to this are firms involved in construction, health services, certain master contracts, state mandates, price categories I and II, and certain aspects of the food industry.

1.22 Definitions

Firm (as opposed to employee unit) any partnership, corporation, association, etc., and any entity directly or indirectly controlled by that corporation, association, partnership, or proprietorship.

Employee - includes officers of corporations, common law status as employee, agent-driver, sales, -- casual or full time. Volunteer and non-paid (except for nominal work-related expenses) people are not employees.

1.23 Computation

1.231 Firms in existence December 31, 1971 -

Average number of employees for pay periods including 6-30-71, 9-30-71, 12-31-71, 3-31-72. The average is the number of employees in these pay periods-4 (or the number of pay periods the firm was in existence if less than 4). If 60 employees or fewer, the firm is exempt.

1.232 New firms (after 12-31-71)

If fewer than 60 employees in the last pay period of the second quarter, average employees in that pay period with first quarter figure. And so on until an average for 4 quarters is established. Thereafter, the exemption is fixed.

If the firm is initially exempt, but becomes non-exempt, the pay period determining non-exempt status will also determine which control year the unit must begin filing exceptions when it exceeds 5.5% or becomes non-exempt, whichever happens latest.

1.233 Changes in size of firm after exemption is established:

1. Firm expands or contracts number of employees - no effect.

2. Firm acquires or is acquired by another firm. If both are exempt, the new entity is exempt. If either is non-exempt, the new entity is non-exempt.

1.234 Changes in "non-exempt" status:

1. If firm was non-exempt on the effective date of the regulations involved, it cannot subsequently qualify even if it is no longer in one of the non-exempt classifications.

2. If firm was exempt and subsequently falls into one of the non-exempt situations, the firm does not lose exemption unless a master contract is negotiated.

No retroactivity - Exempt units cannot renogotiate adjustments, place adjustments into effect, or pay retroactive wages agreed to after August 15, 1971, which exceed 5.5% for periods prior to the effective date of the firm's exemption.

1.24 Applicability

Units in some industries are not exempt even if they meet the criteria, and units in others have special rules.

1.241 Not exempt:

1. engaged in construction

2. provides health services - institutional or noninstitutional

3. had annual sales or revenues in FY ending 5-2-72 of $50 million or more (price categories I and II).

4. if pay adjustments for any firm in which 50% or more of the employees of the firm were set before 5-3-72 by a master contract covering 60 or more employees, or by a jointly negotiated association, industry, area-wide, or group basis covering 60 or more employees. (Either entire K or wage rates.)

5. for those pay adjustments in an exempt firm that are now, or are hereafter set by master or jointly negotiated contract covering 60 or more employees.

1.242 Special Rules (See Chapter IV for details.)

Food industry (and red meat dealers) firm only exempt if:

1. manufacturer, wholesaler, retailer or Service organization who has less than 20% of sales or revenues from sales of food and less than $50 million of annual sales or revenues from sales of food; or

2. employees are members of a unit in which less than 50% of employees are engaged on a regular and continuing basis in food operations, and who are members of a unit in which less than 60 of such employees are engaged in food operations.

1.3 Exceptions

In consideration of the long-term productivity trend, the cost-of-living, and the objective of reducing inflation, the Pay Board established the General Wage and Salary Standard. The establishment Standard provided the opportunity in certain cases for wage and salary increases to be paid without prior approval and minimized the necessity for a large administrative agency.

However, an absolute percentage standard may not reflect the variety of compensation practices or allow the flexibility necessary for an equitable transition from an uncontrolled economy to an economy subject to wage and price controls.

The Pay Board established several exceptions to the general wage and salary standard to recognize certain general classes of inequities, including those inequities caused by a transition to a controlled economy. Generally, these exceptions are limited to an additional 1.5% or a maximum control year increase of 7%. The exceptions contained in Subpart B are not intended to be an exhaustive list of equity considerations which may warrant an exception to the general wage and salary standard. The exceptions reflect equity considerations which are broadly applicable to the economy and which may be easily stated as a general rule.

Section 201.30 was established to provide flexibility in recognizing inequitable situations which were not susceptible to a general rule (e.g., wage comparability or productivity), situations which did not meet the technical requirements of the specific exceptions, or situations which necessitated increases in excess of 7 percent in order to correct the inequity. The exceptions we'll consider are:

1. Tandem Wage Relationship (201.12)

2. Tandem Qualified Benefits (201.13)

3. Essential Employees (201.14)

4. Catch up (201.15)

5. Intra-Unit Inequities (201.18)

6. Case-by-Case Determinations (201.20)

7. Governmental Wage Determinations (201.17)

8. Cost of Living Allowance (201.64(a))

Form S-102 is an investigative tool for wage investigations. The complete form is discussed in Chapter II. Most exceptions have a separate worksheet. These are discussed in this chapter, and are found following the applicable section.

1.31 Tandem Relationship - General
(Sections 201.12, 201.13, 201.30)

Tandem relationship refers to a leader-follower relationship usually applied in an "industry" concept. That [illegible], steelworkers' wages tend to follow other steelworkers' wages very closely in a rather mechanical pattern.

Tandem may exist with respect to every item of compensation, to one item only (i.e. straight-time, number of holidays), or any combination (i.e. the value of a straight-time increase in the lead unit may be divided between a straight-time increase and an extra holiday in the follower unit).

Tandem may exist between disparate units that are subject to the same economic circumstances (i.e. non-union supervisors to union rank and file on longshoremen unloading boats onto a deck and teamsters loading the goods onto a truck from the same dock).

Tandem may exist only within certain classifications of a unit.

1.32 Tandem Wage and Salary Relationship (201.12)

1. Tandem must exist between units of the same employer or between employee units within a commonly recognized industry or local market area, BLS and SIC codes recommended. (See Question 1, Tandem Worksheet - Form S-102.)

2. Tandem must have existed for the prior five consecutive years (Pay Practice) or two preceding contracts (collective bargaining). If not two full contracts then five years are acceptable. (See Question 5, Tandem Worksheet.)

3. Amount and nature of increases in the leader and follower unit must have been "generally equal in value" for the required time period. This has been strict in terms of inter-company and less strict for intra-company units. (See Questions 3 and 6, Tandem Worksheet.)

4. The timing of increases in the follower unit must have been directly related for the required time period to those of the leader unit. An identifiable consistent pattern should be followed. (See Questions 4 and 6, Tandem Worksheet.)

5. The proposed increase must be effective no later than six months after the effective date of the tandem increase for the leader unit. Within reason, the six month rule is not historical. (See Question 4, Tandem Worksheet.)

6. Maintaining the tandem because of a lawful increase by the leader unit must result in an increase above the standard for the follower. Leader need not exceed standard. (See Question 2, Tandem Worksheet.)

1.321 Special Notes

A. Adding increases for required time period is not "generally equal." Relationship must be between adjustments.

B. The PB-3 shows the average increase for a unit both in terms of cents per hour and percentage. Since the "job mix" will vary from one unit to another, tandem cannot usually be established on the bias of the PB-3 alone. A showing of tandem will usually require a careful analysis of increases in each job classification, unless there has been a straight "across the board" increase.

C. Tandem may be percent or cents per hour.

D. "Nature of increase" refers to straight time, included benefit, and qualified benefit, tandem can exist between a unit with merit and one without. (See Question 2, Tandem Worksheet.)

1.322 Limitation: the maximum increase permitted under 201.12 is the lesser of:

A. the increase necessary to maintain the historical pattern; or

B. 7%

1.33 Tandem Qualified Benefits (201.13)

This exception is intended to parallel the exception for tandem wages and salaries-based upon levels of qualified benefits rather than employer cost.

1.331 Requirements

1. same employer, industry, or labor market area. (See Question 1, QB Tandem Worksheet.)

2. tandem established for five prior years (Pay Practice) or two prior contracts (collective bargaining). (See Question 5, QB Tandem Worksheet.)

3. nature and levels of QB's in follower unit generally equal or closely comparable to nature and levels of QB's in leader unit. (See Question 5, QB Tandem Worksheet.)

4. timing of changes in QB of follower unit have been directly related to timing of changes in QB of leader unit. (See Questions 3 and 5, QB Tandem Worksheet.)

5. because of increase in QB of leader unit, maintenance of the tandem will result in an increase in follower QB in excess of the Standard. (See Questions 3 and 5, QB Tandem Worksheet.)

6. effective date of increase in leader unit is not more than twelve months prior to the proposed effective date of the follower unit. (See Questions 6 and 7, QB Tandem Worksheet.)

1.332 Limitation

The lessor of:

1. difference between cost of increased QB of the follower and that of the leader; or

2. the amount of increase in chargeable QB's.

The standard of "generally equal" is more liberal by virtue of the words, "or closely comparable" than the standard of wage and salary tandem.

If the QB's are within the standard of Section 201.59, no exception should be granted, even if the unit qualifies.

Tandem Wage Relationship Worksheet – Section 201.12

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

If a tandem relationship is claimed with more than one unit, provide the data requested below for all such units.

If this sheet is being used for wage comparability under Section 201.30, check box. ☐

1. Identify the leader unit to which you are claiming a tandem relationship.

Name of Company ____________________

Location of Unit ____________________ Industry ____________________

Name & Type of Employees ____________________

National and Local Union with which employer negotiated (if any) ____________________

	Do not know	Yes	No
2. Has the leader's adjustment been approved by the Internal Revenue Service, the Pay Board or COLC	☐	☐	☐
Is there a pending case?	☐	☐	☐

If yes, provide case number ____________________

3. What was the wage rate increase of the leader unit for the control year? ______ cents per hour ______%*

4. (a) Give the effective date for the increase of the leader unit ____________________

(b) Give the effective date for the increase of the follower unit ____________________

	Do not know	Yes	No
(c) Did the wage and salary increase of the leader unit become effective not more than six months before the proposed effective date of the wage and salary increase here requested	☐	☐	☐
5. (a) If based on pay practices, has the tandem relationship been established for the prior five consecutive years?		☐	☐
(b) If based on employment contracts, has the tandem relationship been established in the immediately preceding two consecutive bargaining agreements?		☐	☐
(c) If no, explain why the tandem relationship has not existed for the prior five consecutive years or the preceding two consecutive bargaining agreements?		☐	☐

6. List the effective dates and the amounts (in cents per hour) of all wage and salary increases for both the applicant unit and the leader unit during the two prior contract periods or during the prior five consecutive years of pay practices. If the increases were based on contracts, also indicate the effective dates of the contracts.

If these are differential increases by job category, attach an additional sheet showing the increases for each category.

Applicant unit		Leader Unit	
Effective dates	Cents per hour */	Effective dates	Cents per hour */

7. If claiming tandem or wage comparability, supply the current and two prior contracts for both the leader and follower unit.

*/ If the contract or pay practice provided for wage increases specified in percentages, give the percentages specified and indicate what was used as the base.

Form **S–102A Test** (3-73) Department of the Treasury Internal Revenue Service

Tandem Qualified Benefit Relationship Worksheet – Section 201.13

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

TO THE EXTENT THAT THE LEADER UNIT HAS OFFSET ITS CHARGEABLE QUALIFIED BENEFIT COST AGAINST THE GENERAL WAGE AND SALARY STANDARD, THE COST OF LIVING COUNCIL OR ITS DELEGATE MAY REQUIRE THE FOLLOWER UNIT TO DO THE SAME.

If a tandem relationship is claimed with more than one unit, provide the data requested below for all such units.

1. Identify the leader unit to which a tandem relationship is claimed.

Name of Company ______________________________

Location of Unit ______________________________ Industry ______________________________

Number & Type of Employees ______________________________

National and Local Union with which employer negotiated contract (if any) ______________________________

	Do not know	Yes	No
2. Has the leader's adjustment been approved by the Internal Revenue Service, the Pay Board or COLC?	☐	☐	☐
a) Is there a pending case?	☐	☐	☐

If yes, provide case number ______________________________

3. (a) Effective date(s) of the improvement in qualified benefits of the leader unit ____________________.

(b) Proposed effective date(s) of the increase of qualified benefits for the applicant unit ____________________

(c) Is the proposed effective date(s) of the increase for the applicant unit within 12 months of the effective date(s) of the increase given the leader unit? ☐ ☐

4. Provide a copy of the full text of both the present and the proposed new qualified benefit plans for the applicant unit and the unit to which a tandem relationship is claimed.

5. List the effective dates and the type and level of qualified benefit increases received by both the leader unit and the applicant unit during the two immediately preceding contract periods or the prior five consecutive years of pay practices.

Applicant Unit		Leader Unit	
Effective dates	Type & level of benefit	Effective dates	Type & level of benefit

6. Show the percentage, if any, of increased qualified benefit of the leader unit which was charged against the General Wage and Salary Standard. ____________________ %

7. Show the total chargeable adjustment of the leader unit. ____________________ $

Form **S-102B Test** (3-73)

Department of the Treasury - Internal Revenue Service

1.34 Essential Employees (201.14)

This exception is designed for tight labor market situations.

1.341 Requirements

Applicants must show:

1. Rates below level of comparable firms that have same skill levels in the same industry or geographic area wage comparability. (See Questions 7 and 8, Essential Employee Worksheet.)

2. Employees are essential - must describe business, functions of employees involved, and describe relationship of employee loss to (a) lower profits, (b) declining services, (c) inability to meet contractual obligations, (d) lower productivity. (See Questions 1, 2, and 9, Essential Employee Worksheet.)

3. Significant portion of vacancies - no specific proportion, but must be higher than other firms in the industy or same labor market, and higher than their historical experience. (See Questions 3 and 4, Essential Employee Worksheet.)

4. Recruiting for at least three months; newspaper ads, contacts or contracts with employment agencies, etc. (See Question 5, Essential Employee Worksheet.)

5. No significant deterioration in conditions of employment - parties must give assurance, for example, that air conditioning or restroom facilities have not broken down, crime has not increased in the area, or previous services such as car fare, have not been discontinued. (See Question 6, Essential Employee Worksheet.)

6. A seven percent increase will solve the problem. Parties should make a convincing agreement that higher wages alone will solve the problem. (See Question 9, Essential Employee Worksheet.)

7. Limitation - 7% (1.5% added to 5.5%)

Essential Employees Worksheet — Section 201.14

(For the Control Year Listed in Part I)

Employer's or Association's Legal Name	CLC Control Number IRS Control Number	Date

If this worksheet is being used to support localized shortages of labor under Section 201.30, check box. ☐

1. Identify the job classification(s) which were considered essential.

   a) Title and function.

   b) How many jobs (filled and vacant) existed in the essential employees category(ies) at the time(s) of the wage rate adjustments? ________

   c) How many of these jobs are now vacant? ____________

	Yes	No
d) Have funds been allocated or budgeted to pay for these positions for the year under consideration? ------------------------------	☐	☐

   If no, explain.

2. Why were these employees essential to you?

3. Indicate the number of vacancies in the essential employees classification(s) as a proportion of the jobs in that (those) classification(s).

   a) At the time of the wage rate adjustments ________%

   b) One month earlier ________%

   c) Two months earlier ________%

   d) Three months earlier _____%

   e) One year earlier _____%

   f) At other times, if relevant: Date __________ _____%

   __________ _____%

   __________ _____%

4. What were the turnover rates per 100 employees in the entire appropriate employee unit:

   a) At the time of the wage rage adjustments ________%

   b) One month earlier ________%

   c) Two months earlier ________%

   d) Three months earlier _____

   e) One year earlier _____

   f) At other times, if relevant: Date __________ _____

   __________ _____

   __________ _____

5. Indicate efforts during the three months prior to the wage rate adjustment to recruit these essential employees.

	Yes	No
a) Were advertisements placed in newspapers or trade journals? ------------------------------	☐	☐
If yes, attach copies if available.		
(b) Were the services of the State Employment Service utilized? ------------------------------	☐	☐
c) Were trade and vocational schools contacted? ------------------------------	☐	☐
d) If yes to any of the above, were qualified workers attracted or referred as a result? ------------------------------	☐	☐
Were any of them hired? ------------------------------	☐	☐
If no, explain why not.		

   e) Other recruiting efforts (describe in detail)

6. Were there any significant changes (during the past three months or so) in other conditions of employment related to the jobs that formed the basis for this exception? ------------------------------	☐	☐

   If yes, describe the changes.

7. (a) What was the average straight-time hourly wage rate paid workers in the essential employees classification(s) during the base payroll period? $___________

   (b) What was the average straight-time hourly increase put into effect for these workers (in cents per hour)? $ _________

   (c) What was the average straight-time hourly increase put into effect for other workers in the appropriate employee unit (in cents per hour?) $__________

8. Were the wage rates paid by other employers for the job classification(s) for which you are claiming exception higher than your wage rates? ------------------------------	☐	☐

   a) If yes, what were their rates?

   b) What was the source of their wage rate data?

9. Explain why the requested increasewas necessary to attract or retain employees in the essential category(ies).

10. Why were you unable to grant the increases needed to retain your essential employees out of the increase allowable to your unit under the general wage and salary standard?

1.35 CATCH UP (201.15)

This exception is designed for employee units that have not kept up with economic pace.

1.351 Requirements - Eligibility

1. All cases - only for a control year beginning on or before 11-13-72.

2. $3.00 Rule - A unit's straight-time rate (at expiration of prior contract or pay practice) exceeds $3.00 per hour, catch-up allowed only if new contract succeeds a contract expiring before 7-1-72, or if the new pay practice is established before 7-1-72.

3. State and local government rule - Where the unit was prevented by law from raising wages for a period of time, the exception applies to that period of time. Where the period extends into control years beginning after 11-13-72, it is allowed.

1.352 Requirement - Calculation

1. "Catch-up year" 12 month period roughly equivalent to base year, and the necessary 12 month period preceding.

2. "Catch-up computation rate" average straight-time hourly rate plus average hourly rate on day before effective date of adjustment and day before each catch-up year. Different from Base Compensation Rate as qualified benefits are not included.

3. Computations are "ice cube" i.e., not to reflect variations in work force composition. Promotions, longevity, and other factors described in Section 201.60, are excludible.

4. Determine straight-time and included benefit increases over catch-up year. Remember roll-up eats up catch-up.

5. Multiply 7% X each catch-up year.

6. Subtract total of catch-up years expressed as a percentage from total of each catch up year times 7%.

1.353 Requirement - Limitation

7% (i.e. 5.5% + up to 1.5%) maximum.

1.36 Intra-Unit Inequities

A continuing process of personnel and salary administration is to develop rational and systematic rate relationships between jobs, giving weight to skill, responsibility, effort, working conditions and other factors based on job content. As a result of both external and internal pressures, distortions occur in the structure of relationships among job rates within an appropriate employee unit. The causes of the distortions may result from one or more of the following circumstances:

1. significant change in the content of jobs within the appropriate employee unit resulting from a technological change in equipment, production methods, or materials,

2. a series of cents-per-hour increases causing a compression in the historical percentage wage differentials (which may cause a decline in motivation to acquire new skills), or

3. the existence of random rate structures or the deterioration of a job classification system over a prolonged period of time.

Unless the structure of job rates had been neglected over a prolonged period of time, the latter two situations would normally require only incremental increases (spread over the entire unit) to maintain a rational relationship among job rates. These minor adjustments represent a continuing salary administration process and are treated as any wage or salary increase subject to the 5.5 percent standard. The introduction of new technology usually represents instant, dramatic changes in job content and the relationship between job rates. These changes in job content may require significant increases for certain job rates in the appropriate employee unit in order to represent relative skill factors and competitiveness in particular labor markets.

In consideration of the various causes of distortions in the structure of job rates, it was decided that distortion caused by the introduction of new technology presented a situation in which the effects of the stabilization program were most direct and acute. In this particular situation a general exception to the standard was provided subject to a 7 percent limitation.

1.361 Definition

An intra unit inequity is established where the relationship between the monetary value assigned to an individual job and the monetary value assigned to other jobs in the unit becomes disrupted by changes in the content of one or more jobs as a result of the introduction of new or different technology.

For purposes of this exception, the employer must demonstrate the existence of this inequity and that this inequity was caused by the introduction of new technology.

New technology in the context of this exception refers to a change in equipment, production methods, materials, or processes. The technology may be new to the plant but need not necessarily be new to the industry or firm. If new machinery has been installed as a pilot project affecting a relatively few number of employees in the unit, the institution of the new machinery on a plant-wide or company-wide basis would constitute the introduction of new or changed technology.

1.362 Eligibility Requirements

In order to qualify for an exception, the employer must demonstrate (1) that an intra-unit inequity exists which resulted from "comprehensive" technological changes in equipment, methods, materials, or processes, (2) that a comprehensive plan (as defined in §201.18(a) has been developed which will correct the alleged inequity, and (3) that wage and salary increases in excess of the standard are necessary to correct the inequity in the manner prescribed by the comprehensive plan.

1.363 Comprehensive Technological Change

In order to distinguish between the modification of equipment or processes concomitant with the normal product cycle, a "comprehensive" change in the production methods and techniques is required. For purposes of this exception, a comprehensive change is determined to be a technological change in processes, methods, or materials which affects the job content of not less than 10 percent of the job classifications and not less than 25 percent of the employees in the appropriate employee unit.

The plan, in addition to being comprehensive in terms of coverage of employees and job classifications, must also include the following criteria:

1. Job descriptions--with sufficient detail to identify differences in content based on relative value of the factors by which they are to be measured (skill, physical strain, responsibility).

2. The realignment of wage rates must follow a systematic and orderly method of classifying, ranking or rating all of the jobs in the unit, giving effect to skill, effort, responsibility, working conditions and other factors which are reflected in the job content.

3. Rate relationships shall be established in accordance with accepted methods for job classification, historical practice in an industry, or through some other demonstrable guide in general use for classification purposes, including an explanation of the derivation of factor weighting on which the system is based.

4. Rate relationships shall reflect the different levels of skills as measured by grading selected jobs from the lowest to the highest level, on each of which a significant number of employees are grouped.

5. A computation of the percentage increase in job rates of the unit involved (excluding the effect of "red circle" rates). (For method, see 1.365.)

1.364 Increases in Excess of the Standard

The employer must demonstrate that increases in excess of the standard are necessary to correct the intra-unit inequities.

Example: A normal operation of the pay practice employer generates a 5 percent increase for all employees in the unit. As a result of the introduction of new equipment, certain intra-unit inequities are created affecting 20 percent of the job classifications and 30 percent of the employees in the unit. Three-quarters of the job classifications affected, or 15 percent of total job classifications, require an upward revision in the job rate. The cost of this upward revision averages 1.5 percent of the entire unit's base compensation rate. The total increase for the control year would be 6.5 percent.

1.365 Computation

The comprehensive plan should include the computation of the net increase in job rates excluding the effect of "red circle" rates in the following manner:

1. For single job rates: The percentage difference between the weighted average of current job rates and the weighted average of the proposed job rates.

2. For the reclassification of jobs without change in the existing rate ranges: The percentage difference between the weighted average of the rates actually paid within the range for each classification prior to reclassification and the weighted average of the rates to be paid after such reclassification.

3. For revised rate range structures: The percentage differences between the weighted average of the mid-points of the current job classifications and the weighted average of the mid-points of the proposed job classifications.

The computational method contained in §201.18(d) is not intended to reflect the percentage or cents per hour increase in the base compensation rate. It will not, in most cases, be comparable to the Pay Board computational methods contained in Subpart E due to the exclusion of "red circle" rates and the measurement of job rates rather than total hourly compensation. The computation of increases in job rates or rate ranges will yield a weighted average in cents per hour (or percent) of the ~~net~~ increase in job rates.

1.366 Limitations

The exception is limited to the percentage increase necessary to correct the inequity up to a maximum of 7 percent. Any amounts in excess of 1.5 percent which are necessary for the correction of intra-unit inequities must be charged to the general wage and salary standard unless approval for increases in excess of 7 percent has been granted by the Pay Board pursuant to Section 201.30.

Once this exception has been claimed and allowed with respect to an appropriate employee unit for a control year, it may not be claimed in any succeeding control year by the same unit.

Intra-Unit Inequities Worksheet — Section 201.18

(For the Control Year listed in Part II)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

	Yes	No
1. (a) Had the inequitable pay situation which you seek to correct resulted from the introduction of changed technology in equipment, methods, materials, or processes?	☐	☐
(b) Did this change affect not less than 10 percent of the job classifications and not less than 25 percent of the employees in the appropriate employee unit in which the technological changes had been made or introduced?	☐	☐
2. Did the program describe job classifications with sufficient detail to identify differences in job content based on relative value of the factors by which classifications are measured (including e.g., skill, physical strain, and responsibility)?	☐	☐
3. Did the program provide for a realignment of wage rates that followed a systematic and orderly method for classifying, ranking or rating of all the job classifications in the unit, giving effect to skill, effort, responsibility, working conditions and other factors reflected in the classification content?	☐	☐
4. Did the program establish rate relationships (expressed in dollars and cents) that were established in accordance with accepted methods for job classifications, historical practice in an industry, or through some other demonstrable guide in general use for classification purposes, including an explanation of the derivation of factor weightings on which system is based?	☐	☐
5. Did the program establish rate relationships (expressed in dollars and cents) that reflected the different levels of skills as measured by grading selected jobs from the lowest to the highest level, on each of which a significant number of employees are grouped?	☐	☐
6. Had the percentage increase in wage rates or rate ranges been computed in the manner indicated below for each job classification in the unit, excluding the effect of "red circle" rates, i.e., personal rates for individuals?	☐	☐

(a) For single job classification wage rates, show the percentage difference between the weighted average of the proposed job rates and the weighted average of current job rates.

(b) For the classification of jobs without change in the existing rate ranges, show the percentage difference between the weighted average of the rates to be paid for each job classification after reclassification and the weighted average of the rates actually paid within the range before reclassification.

(c) For revised rate range structures, show the percentage difference between the weighted average of the midpoint of each job classification in the revised structure and the weighted average of the midpoint of each job classification in the existing structure.

ELIGIBILITY UNDER THIS EXCEPTION IS ESTABLISHED ONLY IF ALL OF THE ABOVE CAN BE ANSWERED "YES".

	Yes	No
7. Did this unit receive an intra-unit exception during the previous control year?	☐	☐

8. (a) What percent of the base compensation rate in addition to the general wage and salary standard is needed to correct this intra-unit inequity? ____%

(b) What is the total adjustment above the standard that you are requesting for this control year in this exception? ____%

Remarks

ATTACH A STATEMENT DESCRIBING THE APPLICANT'S COMPREHENSIVE PROGRAM (AS DEFINED IN THE REGULATIONS), THE CAUSE OR NATURE OF THE INEQUITIES, AND THE MANNER IN WHICH IT IS PROPOSED TO CORRECT THEM.

Form **S-102D Test** (3-73)

Department of the Treasury - Internal Revenue Service

1.37 Case-by-Case Determination (§ 201.30)

Section 201.30 "Exceptions on a Case by Case Determination," is similar to Section 130.12 of the Cost of Living Council Regulations. Both establish an exception to the General Pay Standard "to prevent gross inequities, serious market disruptions, or localized shortages of labor." The difference between the two, of course, is that during Phase II, the exception could only be granted by the Pay Board, while now, employers in the voluntary sector may apply the exception without approval. Those in the mandatory sector must still receive Cost of Living Council approval for 201.30 exceptions.

It is important for you to have a working knowledge of some of the principles applied by the Pay Board in granting or denying 201.30 exceptions, because you will undoubtedly find that some employers who have granted pay increases in excess of the standard will offer 201.30 arguments for justifying those increases. You must be able to document these claims and show how 201.30 applies or does not apply. Even when no such claims are put forth by the employer, if you have determined that no other exception applies, 201.30 will have to be explored to some extent in order for COLC to determine if a roll-back is in order.

The following is a list of some of the considerations which will aid the Cost of Living Council in making such determinations. Also included are some examples of typical Pay Board rulings on common 201.30 issues, which will help you in preparing your recommendations. The examples are by no means exhaustive, and should not be considered hard and fast rules, as 201.30 was designed to allow the Pay Board flexibility in dealing with individual cases. The examples illustrate basic principles, which the Cost of Living Council could depart from if circumstances in a given case call for different treatment.

Considerations which the parties might bring to the attention of the Cost of Living Council if the increases were challenged:

(Tandem (Worksheets S-102A, Part 1, S-102E))
201.30 Considerations in many cases grow out of the statutory exceptions. The first of these to be discussed are claims of tandem or comparability which do not meet the requirements of Section 201.12. The following questions should be explored:

Is this unit a "leader" or "follower" with respect to the wage patterns (i.e., do these negotiated increases follow other increases which have been negotiated for the same employer, same union, same plant, or same labor market area)?

...If so, were these other increases approved by the Pay Board or the Internal Revenue Service?
...What were the effective dates of these other increases? If possible, compare the increases of this contract with those of the leader contracts (i.e., are these greater, less, or the same).
...How do these increases follow those of other units (same cents per hours, same percentage, same total costs over the term of the contract)?
...Is it possible to determine which units have historically been leaders and which followers? If this increase goes into effect, how many other contracts (involving how many other workers) might attempt to institute similar increases? What are these units and where are they located?
...If wage increases affect supervisory of salaried personnel, do these increases maintain the historical differential between this unit and other employees within the same plant?

1.371 Historical Comparability

During Phase II, the Pay Board developed a body of case law which was used to decide exception requests above the guidelines. In brief, what the Board attempted to do was to maintain historical wage and salary differentials as they existed at the beginning of Phase II. Thus, if Company-A, which produced the same product as Company-B and employed the same types of employees and had historically paid wage rates lower than those being paid by Company-B, the Pay Board would not allow Company-A to go up to Company-B's wage rates.

It may not now be unreasonably inconsistent for Company-A to pay Company-B's wage rates. Parties are to make their own determinations as to whether or not they fall within list of 201.30 exceptions. The emphasis is on "leader" contracts which could have an impact within the industry, local labor market area, or the company. The fact that a company decides to pay the going rate for its employees even though historically it has paid lower rates, may not in itself be sufficient to cause the Cost of Living Council to challenge the increase. However, where a contract may have an impact on other contracts, a challenge and roll back may result.

An example of Pay Board reasoning in a case with potential inflationary impact was a case involving employees of a brewery.

In the brewing industry there are highly automated plants that require about half as many employees as the older style. Rates for brewers and bottlers at these plants have a "give a nickel here, take a nickel there tandem" even among large companies.

In a case where a new plant was joining two others in tandem, the first contract that placed the new automated plant in tandem with the other two was sufficient evidence to allow it to rise to their rate.

However, the three combined units had then negotiated a new contract that placed them in tandem with other highly automated units around the country. If allowed in full, all automated plants in the country would have been equal.

The past history was "give a nickel here, take a nickel there, tandem." In the Pay Board's view, bringing all units into line would have set the stage for a big increase in May, 1973.

In consideration of all this, the Pay Board allowed 32 cents of the 85 cents straight-time requested - 10% rather than 16.9%, giving them something to work on in May.

This was an unusual case. Normally, when the parties could demonstrate tandem, the Pay Board would allow the entire increase, unless, as in the case above, it appeared that allowance in full would generate pressure for further increases in the industry as a whole.

201.30 tandem was also considered difficult to allow when the contract was "back-loaded." A back-loaded contract is a contract with larger increases at the end of the contract period than at the beginning. Such contracts generate the most "catch-up" pressure.

201.30 tandem was allowed when a new unit or new follower unit could not meet the 201.12 six month time requirement or the two previous contract requirements, but could unmistakeably show the intent to become and stay a follower of the leader unit. However, the 201.12 requirements could not be stretched beyond reason and still receive 201.30 relief. In one case, for example, a perfect tandem with an 18 month time lag between leader and follower was rejected.

Tandem (201.30) was allowable when the follower took less than the leader unit (e.g.; one Seattle unit with a history of perfect tandem to a larger unit negotiated a 7% increase in their first control year rather than the 10% negotiated by the leader. The 7% was allowed). In subsequent years, however, tandem would become progressively more difficult to allow, since the pattern had been broken.

"Package tandem" had two allowable 201.30 aspects. The first was when a follower unit received the same total increase over the life of one or more collective bargaining agreements as the lead unit, but the individual year by year increases did not match up. The second was where the increases among the leader and follower units did match up year by year but they crossed pay adjustment categories. That is, a 45 cents increase in straight time in the leader unit was matched in the follower unit by a 30 cent increase in straight time and a 15 cent increase in included benefits.

Both situations were allowable under 201.30 depending on how close the tandem alleged really was. The actual "package tandem" cases were usually quite clear; that is, tandem was either perfect or quite far off. (Item 4 S-102-E Worksheet)

The Pay Board allowed 201.30 relief when tandem was claimed between supervisors and plant personnel. A weaker standard of tandem was used, but relationships must still be clearly related and very close. The Pay Board used a historic differential test like that outlined in the classroom exhibit on governmental wage determinations. (See Item 3, S-102E Worksheet)

The standard is weaker because the supervisors are usually given the percentage the union people get. However, this percentage is not always clear. For example, supervisors may get the same straight time percentage as union members but no included or qualified benefits. This did not destroy the tandem relationship if the practice was customary. The best check of the tandem is to confirm the calculations and historical validity of whatever method the firm used.

Remember - the key to any tandem is a showing that the leader unit actually paid a lawful increase (in or beyond the standard), which forces this unit above the standard to meet it.

1.372 Newly Established Comparability

A. New Comparability - (Item 2; S-102E Worksheet)

Do these increases involve employees working in a new job, new employee unit, plant or establishment? If such is the case, will the increases bring the wage rates above or below wages for comparable jobs within the industry or labor market area?

In many cases, a unit may be attempting to "catch-up" to area rates for comparable jobs. If this is the case, is it possible to determine what these other area rates are? How many are below? Why has the unit waited till now to catch up?

Doctors who incorporated were a major problem during Phase II, and remained one of our most difficult Compliance problems in Phase III. The Pay Board formulated an in-house rule, known as the "Ashland Clinic" rule for dealing with these situations.

The Board took the position that a doctor who incorporated should set his base compensation rate, including all fringes, at a level equal to his 1040 income from the partnership or individual proprietorship, this being a more appropriate measure of his base rate than comparability studies with other doctors.

If this rate included a qualified pension plan, and the doctor considered himself to be a single appropriate employee unit, (and secretaries, nurses, etc. another unit), the required pension contributions for the other employees necessary to match the doctor's level of contribution would often exceed the allowance 5.5% for these employees. Under Section 201.30, if the doctor and other employees would consider themselves one appropriate employee unit, the Board would allow the pension contributions, provided this did not increase the entire unit over the standard. In other words, the Board would allow, on exception, the doctor to use his own base to increase benefits for his employees, provided the standard was not exceeded.

B. Certification: (Item 5 and/or Item 9; S-102E)

Another situation which received special treatment was the newly certified collective bargaining unit. When a formerly non-union unit is organized, or when a unit changes unions, or when union units wish to combine, the change in the status must be voted on by the employees, and then the union must be certified by the National Labor Relations Board as the representative of the employees.

Under the National Labor Relations Act, it is an unfair labor practice for an employer to grant increases when certification is coming up. This distorts normal wage increase patterns, since certification often involves a lengthy dispute. The Pay Board allowed increases back to a date prior to certification when it was clear that a pattern had been broken.

Similarly, in new plant situations, a common practice is to set starting rates deliberately low when unionization is expected. After certification, this rate is increased to union scale. 201.30 was used to permit these increases when scale and the intent to move to it were clear. Movements to less than scale were also permitted when scale and intent were clear and it was the practice of the union to sign for less than scale on the first agreement, or for other good reasons.

C. Essential Employees (Item 7, S-102E and S-102C):

If the parties state that these wage increases are required to retain essential employees, the Cost of Living Council would like to know the the following:

Have employees actually left employment because of insufficient wages?
How many?
What percentage of the work force?
Has the percentage increased over the past few years?
Is the recent rate of turnover consistent with the industry and/or labor market area experience?
Is the company presently actively engaged in recruiting efforts?
What results have been achieved?

201.30 was allowed only when there was a relatively certain comparability chart. In these instances relief above 7% was allowed. Note that the chart suggests District verification that the units described as "comparable" are a fair sample.

D. Changes in Control Years (Item 9, S-102E):

If increases are claimed to be within the standard because of a change in control year, what would be the percentage of the increase using the control years prescribed under Pay Board regulations? What is the justification for changing the control year?

The Pay Board normally allowed control year changes only in the first control year. General Council's Office indicated uncertainty about the power to change control years in the second and future years even under Section 201.30. Such changes should be viewed with extreme skepticism, and the justification closely scrutinized.

E. Catch Up (Item 9, S-102E): Attach catch up computation if claimed.

If the parties state that increases above 5.5% were granted because of catch-up, what is the three (3) year or prior contract history prior to the first control year? What was granted in the first control year?

The Pay Board allowed 201.30 relief in second control years when a unit was low-paid, and it was clear that it did not take advantage of the statutory catch up exception (201.15) during the first control year (that is, they took 5.5% or less). Where the unit had availed itself of the 201.15 exception, the Board felt that the 7% was generous and sufficient, and 2nd year catch up was not allowed.

F. Low Wage Employees (Item [illegible])

It is not yet clear how [illegible] will treat the [illegible] exemption [illegible] per hour. If the computation [illegible] maintained it should be noted that the Pay Board granted 201.19 exceptions in cases where a good faith attempt was made to use these computational rules, but errors or misinterpretations caused increases above those actually allowed by Section 201.19.

G. Qualified Merit Plans

If the parties base their increases on a qualified merit plan, is there any other exception that might apply?

The Pay Board considered the qualified merit exception to be very generous on its terms. Relief under Section 201.30, either to allow increases above 7% or to extend the expiration of the exception, was almost unknown.

H. Cost of Living: (Item 9, S-102E)

If the unit has granted a cost of living increase greater than that prescribed under Section 201.64 is there some special problem that this unit has that differs from those of other units in the industry or local labor market area?

The Pay Board rarely allowed 201.30 relief for units whose increases were solely due to cost-of-living escalator clause.

I. Phase I Retroactive Pay

While it seems unlikely that Phase I retroactively will become an issue, the question of inclusion in the base of Phase I retro pay (granted under Section 201.34) may arise. If it was included in the base, was the contract agreed to within six (6) months of the effective date of the contract? If so, the Pay Board usually allowed inclusion in the base.

J. Qualified Benefits

In cases where there was no improvement in benefits, the Pay Board in some cases allowed as an "offset", increases in employer contributions where the employer was picking up all or part of the employees contribution. There was no clear rule on this but all circumstances should be verified in such cases.

Where qualified benefit increases exceed the qualified benefit standard how much of this increase is due to "roll-up" because of increases in wages and salaries? When the Q. B. standard was exceeded solely because of an otherwise allowable increase in wages and salaries, the Pay Board usually allowed the "roll-up" increase under Section 201.30.

K. Work Rules (Item 6, S-102E)

Would the parties justify increases on the basis of specific work rule changes which would make the plant more efficient? (A classic example of a work rules change that saved the employer enormous sums of money was the agreement by Railroad Workers to allow trains to run without a fireman aboard. Firemen had become essentially obsolete with the introduction of diesel engines, and the contractual requirement that one be aboard every train kept labor costs high for the railroads). Where work rules are changed, CLC would like the following information:

Were these the result of new contract language?
What rules were changed and when are they effective?
What percentage of the work force is affected by the change?
Can the parties calculate the anticipated cost savings?
If so, have them include calculations. What does this translate to in cents/hour or percentage terms?
How does this cost savings relate to the increases negotiated?
Are there intangibles either given or taken away that should be considered? (e.g. - is there a job security clause or a clause requiring improvements in working conditions in the contract)?

Unless a cost savings was clearly stated and proven and at least matched the increase given, the Pay Board rarely allowed 201.30 relief above 7%.

L. Productivity Increases: (Item 9, S-102E)

When the firm claims that increased productivity justifies wage increases the following issues should be developed:

a) Does the firm or union have calculations showing the productivity increase? If so obtain a copy.
b) Can the parties demonstrate that productivity increases are not due to changed methods or procedures or to new machinery? If such variables are present, how has the firm removed them from its calculations?

Since it was so difficult to qualify for a productivity incentive plan (Section 201.61), the Pay Board allowed credits above the standard for increases in productivity. However, it should be remembered that the 5.5% general standard has a productivity factor built into it. For this reason, the Board required cases based on productivity to start from "ground zero". If the parties could only demonstrate a 2% increase in productivity, this was not sufficient to allow increases above the standard, unless productivity could be combined with other considerations, such as catch-up. Further, the Board required a demonstration that productivity increases were due to increased worker productivity and not to improved methods or machinery.

Productivity is such a complex issue, that it will in most cases require a detailed study by labor economists at CLC.

However, as a rule of thumb, when exploring this issue, it is normally possible to predict that where the decrease in unit labor cost was less than the portion of the pay increase attributed to productivity, productivity gains were not the sole reason for the size of the pay increase, and the other reasons should be discovered, and compared to other possible exceptions.

On the other hand, where the decrease in unit labor cost far exceeds the negotiated pay increase, it is probable that the productivity calculations are speculative or based on faulty assumptions. In such cases these calculations should be closely scrutinized.

M. Small Business Exemption

The Pay Board asked CLC for guidance about when exceptions should be allowed for "near misses" on the Small Business Exemption. CLC is supposed to have replied "never". We are not aware of any exceptions to the definitions of small business ever being granted for reasons of hardship, inequity, or any other reason.

Thus, if any employer claims to be "almost exempt" because he has 61 employees, five of whom are part-time, or has sold a plant and now has only 23 employees, although he formerly had 65, this is not grounds for exception.

1.38 Governmental Wage Determination

This exception was designed to prevent disruption of historical relationships between employees in the same unit, when some of the employees in the unit are granted increases permitted under Section 201.60(f), which are required by state or federal laws requiring certain wage rates for work performed under contract with the government.

These wage rates are set by the Department of Labor under various laws. The most common of these are the Davis-Bacon Act (for construction work), the Walsh Healey Public Contracts Act (for suppliers of goods), the Service Contract Act (for suppliers of services). In addition, forty states have provisions similar to these acts.

Most governmental wage determinations are based on prevailing rates in the area in which the work is to be done.

1.381 Procedure

When a state or federal contract is awarded, the contracting agency is required to send the wage determination to the firm, usually as an attachment to the contract. If this exception is claimed, a copy of the determination should be available for inspection.

1.382 Limitation

The exception may only be used to bring employees not covered by the determination up to levels sufficient to maintain their historical differential with those covered by the determination.

In addition:

a) All of the 5.5% available to the unit must be used before the exception comes into play.
b) The employees must be employed at the same plant, job site, or location as the other employees in the unit.
c) The employees must be employees of the contractor, not of the state government.
d) The historic differential must be computed.

Case-by-Case Determination of Exceptions Worksheet — Section 201.30

Employer's or Association's Legal Name	COLC Control Number IRS Control Number	Date

1. HISTORICAL COMPARABILITY (In straight time rates):

YES NO

(a) Did increase, negotiated or put into effect, follow other increases in the same employer, industry, union, or local labor market area? ☐ ☐

(b) Has there historically been a comparable relationship between these general rates and those prevailing in the general area, industry, or other plants within the same industry? ☐ ☐

(c) If so, were those other related increases approved by the IRS, Pay Board, or COLC? ☐ ☐
(If pre-freeze agreements, please specify, note effective dates, and whether challenges have been filed.)

(d) How many contracts (involving how many workers) are paying these rates? Number of contracts ____________

Total number of workers ____________

(e) What is the type of relationship claimed: same employer, same union, same plant, same labor market area, same industry, etc.?

(f) Provide a listing of other Appropriate Employee Units with wage and/or benefit structures comparable to those of this AEU: Provide also the name(s) of the employer(s); the number(s) and name(s) of the local union(s); the location(s) of the AEU(s); and the number of employees in each AEU.

NOTE: Be sure to provide both the present and past two contracts for both the requested and related increases.

If "Tandem" or wage comparability is claimed, also complete the chart in Worksheet - Tandem Exception, Form S-102A. Also show the average straight-time wage for both units.

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2. NEWLY ESTABLISHED COMPARABILITY (In straight time rates)

Are these increases intended to bring the subject rates up to those currently being paid for comparable jobs in the area, employer, industry or union? ☐ ☐

If "Yes," obtain the rates for the jobs in this unit and the comparable jobs for the last five years or two full contract periods, whichever is greater. Identify source(s) of data.

3. If applicable, was the adjustment for supervisory or salaried personnel necessary to maintain the historical differential between this unit and other employees within the same plant (who are being paid pursuant to existing, non-challenged or approved contracts)? ☐ ☐

If "Yes" show in an attached schedule the historical five-year pattern of the straight time differentials both in percentage and cents per-hour terms, and the average for the entire five-year period, or any other method that shows provision for equitable treatment, between the two employee units. If amount requested is more than the five-year average, attach additional justification for the additional amount.

4. Is this considered a "package tandem" case? ☐ ☐

NOTE: "Package Tandem" - often in negotiating contracts, various employee units will negotiate varying increases; however, over the period of the contract, the total contract cost will be the same in the cents-per-hour increases. While this is not tandem according to regulations, it is something that the COLC may want to consider in reviewing the wage increase.

If "Yes," complete and attach a schedule showing all wage and benefit increases for the last five years or two full contract periods, whichever is greater, with an explanation or justification of why the differing amount and/or timing of the increases was negotiated and the dollar amount of the contract settlement (broken down into wages and qualified benefits).

5. Did the case involve a "new plant" situation, where:

(a) "Tandem" cannot be demonstrated for the required period of time, or ☐ ☐

(b) Initial rates were established lower than those for comparable jobs in order to allow the firm to establish itself (this should be fully documented), or company set low rates initially and then the employees were unionized, or ☐ ☐

(c) Are these rates above or below rates for comparable jobs within the industry or labor market area? ☐ ☐

If "Yes," explain and document.

6. Did parties claim exception on the basis of changes in work-rules? If so, provide the following information as necessary. ☐ ☐

(a) The results of new contract language?

(b) Which rules were changed and when are (were) they effective?

(c) Any new or revised "job security" clauses in the contract?

(d) The percentage of the work force affected by the changes?

(e) Can the parties calculate the anticipated cost savings? What does this translate to in cents/hour or percentage terms? Show these calculations.

Form **S-102E Test** (3-73)

Department of the Treasury - Internal Revenue Service

7. Did the parties claim exception on the basis that wage increases were necessary to retain essential employees? ---- ☐ ☐

If so, provide the information in worksheet S-102C.

8. Were the economic terms of the contract agreed to at a different date from the date of the signing of the contract? --- ☐ ☐

If "Yes," attach a copy of the memorandum of understanding or other evidence of earlier agreement of the economic terms of the contract.

9. Are there any other special circumstances or equitable considerations that would tend to either support or not support the increase in question. Include such considerations as cost of living, changes in productivity, certification proceedings, gross inequities and hardships not otherwise enumerated. -- ☐ ☐

If "Yes," attach supporting schedule and explain.

1.39 Cost of Living Allowance (S-102H)

This is really a special computation method tied to a determination of "generally accepted escalator formula". (See discussion in Chapter III)

1.391 "Generally Accepted Escalator Formula"

(PB Ruling 1973-1)

This should be shown as:

(1) used by a major industry before 1972; and

(2) calculated by the same method; or

(3) low-probably no more than 10 cents

Adjustment possible during year under any known circumstances.

Cost of Living Allowance Worksheet — Section 201.64(a)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

1. Provide a copy of the cost of living formula in effect during the control year listed in Part II with this submission.

2. List the cost of living allowances during the control year.

Effective date of adjustment (a)	Number of months during the control year that the adjustment will be in effect (b)	Col. (b) divided by 12 (rounded to 1 decimal place) (c)	Amount of adjustment (d)	Adjusted amount of increases (Col. (c) times Col. (d)) (e)

Enter adjusted amounts from Column (e) onto line 20 of Form PB-3 or line 22 of Form PB-3A.

Form **S-102H Test** (3-73)

Department of the Treasury - Internal Revenue Service

1.4 DEFERRED INCREASES (§ 201.35)

1.41 Introduction

(1) The announcement of the 90-day wage, price, and rent freeze on August 15, 1971, interrupted scheduled increases provided for in contracts or pay practices. Where a contractual commitment existed to pay wage or salary increase, the employees, in anticipation of the scheduled increases may have incurred financial obligations. A parallel, though less clearly defined commitment, exists for certain increases scheduled pursuant to pay practices.

(2) Definitions

"Deferred increases" - increases effective after November 13, 1971, for which a commitment was made prior to November 14, 1971.

"Existing contract" - commitment was contained in a collective bargaining agreement effective before November 14, 1971.

"Pay practice previously set forth" - commitment was established before November 14, 1971, to pay increases after November 13, 1971, pursuant to a pay practice.

Existing contracts and pay practices previously set forth are allowed to operate according to their terms subject to certain challenge, review and reporting procedures.

(3) Effect on Wage and Salary Standard

Deferred increases may be paid without regard to the general wage and salary standard unless "unreasonably inconsistent" with the criteria set forth in section 203(b) of the Act and the standards and exceptions established by the Pay Board.

Pay practices previously set forth and existing contracts may operate without regard to general wage and salary standard until the commitment which was established prior to November 14, 1971, is modified or terminated. The commitment contained in an existing contract will usually be terminated when the contract expires. A pay practice previously set forth "terminates" when the commitment is modified, either by increasing the amount or by changing the administration of the pay practice from that which existed when the commitment was made. Increases paid pursuant to pay practices previously set forth may receive treatment as "deferred increases" only for control year beginning prior to November 14, 1972.

1.42 Existing Contracts

(1) General

An employment contract in existence prior to November 14, 1971 is identified by a written instrument including all terms and conditions of employment negotiated and signed by both employer and union (or employee) prior to November 14, 1971. If the negotiations on non-economic terms (working conditions) have not been concluded, but economic terms were signed prior to November 14, 1971, the contract is still considered complete.

(2) Arbitration

Where a dispute has been handed over to an arbitrator for a decision, the arbitrator's decision must have been handed down before November 13, 1971, in order for the decision to stand as part of an existing contract.

(3) Wage and Benefit Reopeners

Increases negotiated after November 14, 1971, pursuant to certain wage and fringe benefit re-opening provisions are deemed to be pursuant to a contract which existed prior to November 14, 1971, if the following criteria are met.

a) re-opening provision was specifically agreed to or incorporated in a contract prior to August 15, 1971.
b) re-opening provision established a given date for re-opening.
c) such contract provided for specified termination other than by operation of the re-opening provision.

(4) Merit Plans in Contracts in Effect Prior to November 14, 1971

Merit plans contained in employment contracts which were in effect prior to November 14, 1971, are allowed to operate according to their terms subject to possible challenge and review. The merit plan must either be contained in the contract or included by reference for the duration of the contract. The merit plan must be sufficiently defined, to provide documentation that subsequent increases are being made in accordance with the terms of the merit plan.

1.43 Pay Practices Previously Set Forth

1. Introduction

A pay practice is considered to be previously set forth only if it can be documentated that prior to November 14, 1971, an adjustment to wages and salaries, or in the case of the merit plan, the aggregate amount to be expended was:

(a) decided finally and formally in accordance with established procedures and

(b) communicated to the management personnel responsible for implementing the pay adjustment or to the employees affected.

Although the pay practice does not have to be reduced to writing the amount of the wage and salary increases must be documentated. It must be demonstrated that the employer committed himself prior to November 14, 1971, to an amount of money to be spent on increases and that the employer did not retain significant discretion to vary the amount. The regulations do not require that the employer grant increases equal to his total commitment, but he may not increase or exceed this commitment without having the "pay practice previously set forth" expire.

2. Expiration of a Pay Practice Previously Set Forth

Merit plans which were pay practices previously set forth, as well as other pay practices previously set forth, are subject to the general wage and salary standard for all control years beginning after November 13, 1972. Merit plans which qualify as pay practices previously set forth are deemed to expire on the day before the effective date of any changes in the merit plan, including:

(a) Any increase or changes in the rate or rate ranges from those in effect on November 13, 1971.

(b) An increase in the aggregate amount to be expended for merit increases above the aggregate amount determined prior to November 14, 1971.

(c) A change in the job classifications to which the rates or rate ranges apply.

(d) A change in the terms or conditions of the plan with respect to any job classification to which it applies or a change in the policy for determining the size and frequency of merit pay adjustments or a change in the administrative controls.

1.44 Expiration of Deferred Treatment

If a pay practice previously set forth terminates, or an existing contract expires during a control year, the appropriate employee unit may receive for the remaining of the control year only the excess, if any between, (a) the increase that would otherwise be permissible under the 5.5% standard or applicable exceptions, and (b) the amount of increases paid during the control year pursuant to the existing contract or pay practice previously set forth.

1.5 STATE AND LOCAL GOVERNMENT (SUBPART H)

In general, pay adjustments affecting employees of state and local governments are subject to the same regulations which apply to pay adjustments of private sector employees. In recognition of certain unique compensation practices in the public sector, the Committee on State and Local Government Cooperation submitted recommendations to the Pay Board concerning clarification and modification of the regulations. After consideration of these recommendations, the Pay Board adopted regualtions (set forth in Subpart H) concerning compensation practices unique to the public sector.

The regulations establish guidelines and procedures for pay adjustments affecting employees of local governments which are mandated by a State, pay adjustments affecting certain public officials, and a modification of the definition of a "qualified" pension or retirement plan for purposes of the qualified benefits standard.

1.51 Exception for Frozen Employees (§ 201.94)

A common practice of state and local governments is to legislate prohibitions against salary increases for public officials while they hold office, or against increases except at certain specified intervals such as every two years or four years, etc. The Pay Board, recognizing the fact that such laws often hold salaries at unreasonably low levels, permitted increases in excess of 5.5% under certain conditions.

1.511 Requirements (Eligibility)

(a) The employee must be an elected or appointed official.
(b) He must not be included in an employee unit which contains employees whose salaries are not frozen.
(c) The law of the jurisdiction must have prohibited the increase for more than 12 months.
(d) The law must be a specific prohibition which establishes an ascertainable period of time for the prohibition. The fact that pay adjustments must be approved by a legislature and the legislature has not acted for several years is not sufficient.
(e) Wages and salaries for these employees (other than fringe benefits) must not have been increased during the prohibition period.

1.512 Requirements (Computation)

(a) Base compensation is determined in accordance with the unit's customary practice - in terms of weekly, monthly and annual salary, etc., (not necessarily hourly), but must include all the elements of the BCR as defined in the computation regulations.
(b) The base compensation rate determined above is multiplied X 5.5% for each year of the prohibited period (uncompounded), or portion thereof, less fringe benefit increases. The result is the dollar increase allowed in the control year.

1.513 Qualified Public Employee Benefit Plans - designed to allow 201.59 treatment for public pension plans.

1. Requirements (Eligibility)

(a) law must require a trust, or
(b) require money be used as premiums or invested for employee retirement plans or bonds, or
(c) require funds be otherwise permanently set aside for deferred compensation.
(d) A third party fiduciary is not required.
(e) Funds must remain identifiable, and be subject to accounting procedures.
(f) A plan does not qualify if paid to a general fund for later disbursement to beneficiaries.

2. Requirements - Computation

This is done in the same manner as in Section 201.59.

1.514 State Mandated Pay Adjustment

This is designed to permit policy body consideration when state and federal interests conflict by classification of these adjustments as Category I.

(a) Definition: a pay adjustment mandated (ordered) by a legislative or administrative body of state government, or by the action of an agency of a state government. It must cover local government employees, not state employees.

(b) Requirements: a) The Pay Board required these pay adjustments to be prenotified. This requirement did not apply in Phase III. However, where the mandated adjustment applies to or affects 5,000 employees or more, it must be reported to COLC.

(c) Computation: For reporting purposes the increase may be computed by subtracting the previously mandated rate from the mandated rate that will be in effect when the adjustment is implemented (the fact that the real wages of employees affected may be higher is not required to be included in the computation). The increase may be stated in terms of annual or monthly rates, etc., in accordance with the State's customary practice.

Chapter II

WAGE & SALARY INVESTIGATION WORKSHEET S-102

2.1 INTRODUCTION

To accomplish our mission of encouraging and achieving the highest possible degree of voluntary compliance, emphasis will be placed on quality and in-depth examinations of all types of firms to insure compliance with the Economic Stabilization Program. In order to establish and maintain an effective and balanced compliance program, we have developed a nationwide wage and pay compliance monitoring program. The program will be designed to determine compliance during Phase II and to gather intelligence data on the willingness of firms to comply with the voluntary aspects of controls during Phase III & IV. This will be an on going program and will require a significant effort.

The objectives of the Wage and Salary Compliance Monitoring Program will be to:

1. Examine as many firms as possible within manpower constraints in order to maintain a high degree of voluntary compliance.

2. Establish an effective and balanced nationwide compliance program in the wage and salary area.

3. Gather intelligence data on known or probable areas of non-compliance.

2.12 Where are the Cases Coming From?

Initially a sample of approximately 200 firms will be selected for intensive examinations. The sample will be selected by the Office of Compliance and Enforcement, Cost of Living Council from various data bases. From this initial survey we expect to develop areas of known or probably non-compliance for which our "sticks in the closet" can be directed. We also feel the examinations will provide the public with greater visibility of our program which in itself will foster voluntary compliance.

The sample selection involves the use of Pay Board Phase II files for one group of firms to be investigated, and the News Front Data Base for the second group to provide diversity and randomness to the total list.

2.2 THE ASSIGNMENT

Stabilization Compliance Investigations (SCI's) are full compliance contacts to determine whether there have been any violations of the Pay Stabilization Regulations. The Form S-71 will indicate a specified assignment to be investigated.

Become familiar with the information furnished in the assignment. The specific instructions included with the investigation request and the Regulations involved should also be reviewed.

Contact a responsible officer of the firm and identify yourself. Make it clear that you are investigating the firm's compliance with the Economic Stabilization Program and that this examination of the firm's books and records is not related to an audit of the firm's Federal tax liability. This is important because IRC 7605(b) provides that ordinarily a taxpayer's books and records can only be inspected once each tax year for matters relating to tax compliance.

If your authority is questioned, refer to the Economic Stabilization Act of 1970 (P.L. 91-379; 84 Stat. 799), as amended, Executive Order 11627 dated October 15, 1972, and Executive Order 11695, dated January 11, 1973, as your authority. Personal conduct should be the same as during a tax investigation. Remember, you are a fact-finder and cannot commit the Government to any particular legal action when dealing with an alleged violator. Never express any opinion indicating prejudice or preconception. If you are uncertain as to the interpretation of a particular Regulation, seek the advice of knowledgeable technical personnel. Answer question only when you are sure you are correct.

2.21 The Initial Contact

When the firm is first contacted, determine whether it is subject to the Stabilization Regulations. If the firm is now exempt and the investigation involves periods after the firm was exempted from the Program, close the investigation with a statement to this effect.

Initially, determine if the firm is currently in or about to enter labor negotiations. If so, the investigation is to be close out and a report on the status of negotiations indicating the probably completion date is to be submitted. You should in no way interfere with the collective bargaining process.

Under Phase II regulations, companies were required to submit requests for exceptions for increases in excess of the general wage and salary standard and to await the decision and order of the Pay Board prior to putting any excesses into effect. In certain instances, some of these requests for exception were denied even though there was strong representations on the part of the company and the appropriate employee unit (or union) identifying reasons why some percent higher than the general wage and salary standard should be given. Often the differences between the percentage requested and the percentage granted were excessively large, thus possibly creating great pressures on the part of both the company and the appropriate employee unit to perhaps make these payments at the end of Phase II and the beginning of Phase III. Therefore, it is proposed to utilize the Pay Board's computer data base and initially identify those companies wherein the percentage requested and the percentage granted is in excess of 10 percent. In these companies it is believed that there may have been great upward pressure on the part of either the company or the appropriate employee unit to either make an additional payment or grant some other kind of increase during the transition period following Phase II. Also, it is believed there may be an inclination on the part of some of these companies to give excessively large increases under the voluntary compliance activities of Phase III. Hence, these companies would appear to represent a good "first cut" target for this compliance activity.

To make sure that we are not overly aggressive with respect to companies that have voluntarily submitted Forms PB 1, 2 or 3 under Phase II, we propose to access the News Front computer data base of 25,000 companies and select additional companies of approximately the same size, in the same business, and in the same geographical location as the companies being selected from the Pay Board's data base. This additional selection of companies will provide a further cross check of similar sized companies to again determine their compliance under Phase II regulations and under the Phase III voluntary wage and price guidelines.

2.22 Who will make the examinations?

To ensure proper execution of an efficient Wage and Salary Compliance Monitoring Program, it is important that all examining personnel have a knowledge of the Economic Stabilization regulations. In this respect, pay specialists skilled in wage investigations and with specialized training in the technical aspects of the Pay Board regulations will examine the larger firms and those containing controversial or complex issues and assist nonspecialists in wage investigations where such assistance is requested. When nonspecialists are used it is important that these individuals are aware that pay specialists are available for assistance during the investigation.

2.3 INTRODUCTION TO THE S-102

2.31 General

(a) As a means of standardizing the investigative methods and to insure that the body of data gathered in each case is adequate for a firm determination of compliance or lack of compliance, Form S-14 Compliance Investigation Summary - Wage and Salary will be used as the main audit tool of the investigation. This Summary, together with its schedules, will be used with the PB-3 or PB-3A form to determine the amount of wage and salary increase given, and if the increase is over the general wage and salary standard, the reason or reasons for the exception.

(b) A complete and thorough investigation is required. Many of the firms that will be investigated are very knowledgeable of the Regulations and some may have developed sophisticated systems to cope with the Regulations.

2.32 Conduct of Investigation

(a) Control Year

Investigations should be confined to the current control year for the appropriate employee unit under section 201.53 of the regulations.

(b) Decision and Orders

Determine if the company has received determination, interpretation or decision and order covering the current control year from IRS or Pay Board and if the company is in compliance with the decision. If the company is in compliance with the decision, the survey should be terminated. Parts I, II and III 7a and 7b of Form S-102 should be completed and a PB-3 or PB-3A whichever is appropriate included in the case file.

If the company is not in compliance with the decision Parts I, II and III 8a and 8b of Form S-102 should be completed and a PB-3 included in the case file. In such cases, indicate the reasons for noncompliance and make a recommendation pertaining to the propriety of a challenge under Subpart J Part 130 of the Cost of Living Council regulations.

(c) No Outstanding Decision

By use of a PB-3 or PB-3A whichever is appropriate, determine if the company is in compliance with the Wage and Salary guidelines.

If the company is within the wage and salary guidelines, the investigation should be terminated. Parts I, II and III 7a and 7b of Form S-102 should be completed and a copy of the PB-3 or PB-3A included in the case file.

If it is determined that the company is not in compliance with the wage and salary guideline, all parts of the S-102 should be completed and a PB-3 included in the case file.

In such cases, indicate the reason for non-compliance and make a recommendation pertaining to the property of a challenge under Subpart J Part 130 of the Cost of Living Council regulations.

Economic Stabilization Program

Compliance Investigation Summary-Wages and Salaries

COLC Control No.

IRS Control No.

Part I - Identification   Mandatory Sector ☐   Self Administered Sector ☐

1 Employer or Association

a. Legal and trade name (if any)

b. Employer Identification Number (IRS)

c. Address (number, street, city or town, State and ZIP code)

d. Individual in company or association to be contacted for further information

e. Telephone (area code and number)

2 Parent Company

a. Name

3 Union

a. Name, local number and national affiliation

b. Address (number, street, city or town, State and ZIP code)

c. Individual in union to be contacted for further information

d. Telephone (area code and number)

4 Contract Data

a. Date contract was signed

b. Duration of contract
From: To:

c. Control Year 1 2 3 4   From: To:

d. Date of first adjustment provided for under the contract.

e. Were the economic terms agreed to at a different time from the date of the signing of the contract? Yes ☐ No ☐
(If yes attach memorandum of understanding or other evidence or earlier agreement of economic terms.)

f. Note: Be sure to attach a copy of the current and two prior contract agreements.

Part II - Employee Unit Involved

5 Appropriate Employee Unit

a. Appropriate Employee Unit (Specify Type)	b. Industry Code	c. Principal service product or activity	d. Category	e. No. of Employees in Unit

f. Has the appropriate employee unit involved been changed since the last filing or within the past twelve months or does the I.R.S. dispute the determination of the appropriate employee unit? (If yes, explain)? Yes ☐ No ☐

6 Previous Filing

During the last 12 months, has a form covering any of the employees covered by this report been filed with the Internal Revenue Service, the Pay Board or COLC?

a. Yes ☐   b. No ☐   c. IRS control number from previous case ____________________

d. Pay Board or COLC case number from previous case ____________________

e. Has a decision and order been issued? Yes ☐ (Attach copy)   No ☐

Part III - Findings and Recommendations

7 Total Adjustment

a. Total Control Year Adjustment Chargeable Against Wage Standard (Line 39 on PB-3 or Line 29 on PB-3A) ____________________%

b. Source of data PB-3 ☐   PB-3A ☐ (Enclose copy)

8 Worksheet Selection

If line 7 a is in excess of 5.5% check the appropriate column and complete the applicable worksheets.

Worksheet Form Number	Subject	Regulations Section	Claimed	Qualified	
			Yes	Yes	No
S-102A	Tandem Wage Relationship	201.12			
S-102B	Tandem Qualified Benefit Relationship	201.13			
S-102C	Essential Employees	201.14			
S-102D	Intra-Unit Inequities	201.18			
S-102E	Case-by-Case Determination of Exceptions	201.30			
S-102F	Wage Reopener Provisions	201.35(c)			
S-102G	Qualified Benefits Standard	201.59			
S-102H	Cost of Living Allowance	201.64(a)			
S-102I	State and Local Governments	Subpart H			
	Other (Specify)				
	Other (Specify)				

9 Executive and Variable Compensation	Does the employer's compensation practice include any provisions for incentive compensation (bonus plans, stock options, etc.) or any other variable compensation (sales plans, commissions, or production incentive programs)? (If appropriate, complete Form S-82, Compliance Investigation Worksheet - Executive and Variable Compensation, and include with case file.)	Yes ☐	No ☐
10 Remarks	Investigator's comments (Refer to applicable item number, when appropriate. If more space is needed, continue below or attach additional sheets.)		

Part IV - Closing Information

11. a. Name of Investigator (Please print)		12. a. Name of Reviewer
b. Time required to complete investigation (Hours)		b. Date
c. Telephone Number	d. Date	

Tandem Wage Relationship Worksheet – Section 201.12

Employer's or Association's Legal Name	COLC Control Number IRS Control Number	Date

If a tandem relationship is claimed with more than one unit, provide the data requested below for all such units.

If this sheet is being used for wage comparability under Section 201.30, check box. ☐

1. Identify the leader unit to which you are claiming a tandem relationship.

Name of Company ____________________

Location of Unit ____________________ Industry ____________________

Name & Type of Employees ____________________

National and Local Union with which employer negotiated (if any) ____________________

	Do not know	Yes	No
2. Has the leader's adjustment been approved by the Internal Revenue Service, the Pay Board or COLC -------------	☐	☐	☐
Is there a pending case? --	☐	☐	☐

If yes, provide case number ____________________.

3. What was the wage rate increase of the leader unit for the control year? _______ cents per hour ________ %*

4 (a) Give the effective date for the increase of the leader unit ____________________.

(b) Give the effective date for the increase of the follower unit ____________________

(c) Did the wage and salary increase of the leader unit become effective not more than six months before the proposed effective date of the wage and salary increase here requested -----------------------------------	☐	☐	☐
5. (a) If based on pay practices, has the tandem relationship been established for the prior five consecutive years?---		☐	☐
(b) If based on employment contracts, has the tandem relationship been established in the immediately preceding two consecutive bargaining agreements?-------------------------------		☐	☐
(c). If no, explain why the tandem relationship has not existed for the prior five consecutive years or the preceding two consecutive bargaining agreements?-------------------------------		☐	☐

6. List the effective dates and the amounts (in cents per hour) of all wage and salary increases for both the applicant unit and the leader unit during the two prior contract periods or during the prior five consecutive years of pay practices. If the increases were based on contracts, also indicate the effective dates of the contracts.

If there are differential increases by job category, attach an additional sheet showing the increases for each category.

Applicant Unit		Leader Unit	
Effective dates	Cents per hour */	Effective dates	Cents per hour */

7. If claiming tandem or wage comparability, supply the current and two prior contracts for both the leader and follower unit.

*/ If the contract or pay practice provided for wage increases specified in percentages, give the percentages specified and indicate what was used as the base.

Form **S–102A Test** (3-73)

Department of the Treasury - Internal Revenue Service

Tandem Qualified Benefit Relationship Worksheet -- Section 201.13

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

TO THE EXTENT THAT THE LEADER UNIT HAS OFFSET ITS CHARGEABLE QUALIFIED BENEFIT COST AGAINST THE GENERAL WAGE AND SALARY STANDARD, THE COST OF LIVING COUNCIL OR ITS DELEGATE MAY REQUIRE THE FOLLOWER UNIT TO DO THE SAME.

* If a tandem relationship is claimed with more than one unit, provide the data requested below for all such units.

1. Identify the leader unit to which a tandem relationship is claimed

Name of Company ____________________

Location of Unit ____________________ Industry ____________________

Number & Type of Employees ____________________

National and Local Union with which employer negotiated contract (if any) ____________________

	Do not know	Yes	No
2. Has the leader's adjustment been approved by the Internal Revenue Service, the Pay Board or COLC? ---------	[]	[]	[]
a) Is there a pending case?-------------------------------	[]	[]	[]

If yes, provide case number ____________________

3. (a) Effective date(s) of the improvement in qualified benefits of the leader unit ____________________

(b) Proposed effective date(s) of the increase of qualified benefits for the applicant unit ____________________

(c) Is the proposed effective date(s) of the increase for the applicant unit within 12 months of the effective date(s) of the increase given the leader unit?------------------------------- [] []

4. Provide a copy of the full text of both the present and the proposed new qualified benefit plans for the applicant unit and the unit to which a tandem relationship is claimed.

5. List the effective dates and the type and level of qualified benefit increases received by both the leader unit and the applicant unit during the two immediately preceding contract periods or the prior five consecutive years of pay practices.

Applicant Unit		Leader Unit	
Effective dates	Type & level of benefit	Effective dates	Type & level of benefit

6. Show the percentage, if any, of increased qualified benefit of the leader unit which was charged against the General Wage and Salary Standard ____________________%

7. Show the total chargeable adjustment of the leader unit ____________________%

Essential Employees Worksheet – Section 201.14

(For the Control Year Listed in Part II)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

If this worksheet is being used to support localized shortages of labor under Section 201.30, check box ☐

1. Identify the job classification(s) which were considered essential.

   a) Title and function.

   b) How many jobs (filled and vacant) existed in the essential employees category(ies) at the time(s) of the wage rate adjustments? ________

   c) How many of these jobs are now vacant? ________

	Yes	No
d) Have funds been allocated or budgeted to pay for these positions for the year under consideration? --------------------------- If no, explain.	☐	☐

2. Why were these employees essential to you?

3. Indicate the number of vacancies in the essential employees classification(s) as a proportion of the jobs in that (those) classification(s).

   a) At the time of the wage rate adjustments ________%

   b) One month earlier ________%

   c) Two months earlier ________%

   d) Three months earlier ______%

   e) One year earlier ______%

   f) At other times, if relevant: Date ________ ____%

   ________ ____%

   ________ ____%

4. What were the turnover rates per 100 employees in the entire appropriate employee unit:

   a) At the time of the wage rage adjustments ________%

   b) One month earlier ________%

   c) Two months earlier ________%

   d) Three months earlier ______

   e) One year earlier ______

   f) At other times, if relevant: Date ________ ____

   ________ ____

   ____ ____

5. Indicate efforts during the three months prior to the wage rate adjustment to recruit these essential employees.

	Yes	No
a) Were advertisements placed in newspapers or trade journals? -- If yes, attach copies if available.	☐	☐
(b) Were the services of the State Employment Service utilized? --	☐	☐
c) Were trade and vocational schools contacted? --	☐	☐
d) If yes to any of the above, were qualified workers attracted or referred as a result? --	☐	☐
Were any of them hired?--	☐	☐

   If no, explain why not.

   e) Other recruiting efforts (describe in detail)

6. Were there any significant changes (during the past three months or so) in other conditions of employment related to the jobs that formed the basis for this exception? --	☐	☐

   If yes, describe the changes.

7. (a) What was the average straight-time hourly wage rate paid workers in the essential employees classification(s) during the base payroll period? $________

   (b) What was the average straight-time hourly increase put into effect for these workers (in cents per hour)? $ ________

   (c) What was the average straight-time hourly increase put into effect for other workers in the appropriate employee unit (in cents per hour?) $________

8. Were the wage rates paid by other employers for the job classification(s) for which you are claiming exception higher than your wage rates?--	☐	☐

   a) If yes, what were their rates?

   b) What was the source of their wage rate data?

9. Explain why the requested increase was necessary to attract or retain employees in the essential category(ies).

10. Why were you unable to grant the increases needed to retain your essential employees out of the increase allowable to your unit under the general wage and salary standard?

Form **S-102C Test** (3-73)

Department of the Treasury - Internal Revenue Service

Intra-Unit Inequities Worksheet — Section 201.18

(For the Control Year listed in Part II.)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

Yes No

1. (a) Had the inequitable pay situation which you seek to correct resulted from the introduction of changed technology in equipment, methods, materials, or processes?---------- ☐ ☐

(b) Did this change affect not less than 10 percent of the job classifications and not less than 25 percent of the employees in the appropriate employee unit in which the technological changes had been made or introduced?---- ☐ ☐

2. Did the program describe job classifications with sufficient detail to identify differences in job content based on relative value of the factors by which classifications are measured (including e.g., skill, physical strain, and responsibility)?---------- ☐ ☐

3. Did the program provide for a realignment of wage rates that followed a systematic and orderly method for classifying, ranking or rating of all the job classifications in the unit, giving effect to skill, effort, responsibility, working conditions and other factors reflected in the classification content?---------- ☐ ☐

4. Did the program establish rate relationships (expressed in dollars and cents) that were established in accordance with accepted methods for job classifications, historical practice in an industry, or through some other demonstrable guide in general use for classification purposes, including an explanation of the derivation of factor weightings on which system is based?---------- ☐ ☐

5. Did the program establish rate relationships (expressed in dollars and cents) that reflected the different levels of skills as measured by grading selected jobs from the lowest to the highest level, on each of which a significant number of employees are grouped?---------- ☐ ☐

6. Had the percentage increase in wage rates or rate ranges been computed in the manner indicated below for each job classification in the unit, excluding the effect of "red circle" rates, i.e., personal rates for individuals?---------- ☐ ☐

(a) For single job classification wage rates, show the percentage difference between the weighted average of the proposed job rates and the weighted average of current job rates.

(b) For the classification of jobs without change in the existing rate ranges, show the percentage difference between the weighted average of the rates to be paid for each job classification after reclassification and the weighted average of the rates actually paid within the range before reclassification.

(c) For revised rate range structures, show the percentage difference between the weighted average of the midpoint of each job classification in the revised structure and the weighted average of the midpoint of each job classification in the existing structure.

ELIGIBILITY UNDER THIS EXCEPTION IS ESTABLISHED ONLY IF ALL OF THE ABOVE CAN BE ANSWERED "YES".

Yes No

7. Did this unit receive an intra-unit exception during the previous control year?---------- ☐ ☐

8. (a) What percent of the base compensation rate in addition to the general wage and salary standard is needed to correct this intra-unit inequity?---------- ____%

(b) What is the total adjustment above the standard that you are requesting for this control year for this exception?---- ____%

Remarks

ATTACH A STATEMENT DESCRIBING THE APPLICANT'S COMPREHENSIVE PROGRAM (AS DEFINED IN THE REGULATIONS), THE CAUSE OR NATURE OF THE INEQUITIES, AND THE MANNER IN WHICH IT IS PROPOSED TO CORRECT THEM.

Form **S-102D Test** (3-73)

Department of the Treasury - Internal Revenue Service

Case-by-Case Determination of Exceptions Worksheet — Section 201.30

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

1. HISTORICAL COMPARABILITY (In straight time rates):

YES NO

(a) Did increase, negotiated or put into effect, follow other increases in the same employer, industry, union, or local labor market area? ---------- ☐ ☐

(b) Has there historically been a comparable relationship between these general rates and those prevailing in the general area, industry, or other plants within the same industry? ---------- ☐ ☐

(c) If so, were those other related increases approved by the IRS, Pay Board, or COLC? ---------- ☐ ☐
(If pre-freeze agreements, please specify, note effective dates, and whether challenges have been filed.)

(d) How many contracts (involving how many workers) are paying these rates? Number of contracts ____________

Total number of workers ____________

(e) What is the type of relationship claimed: same employer, same union, same plant, same labor market area, same industry, etc.?

(f) Provide a listing of other Appropriate Employee Units with wage and/or benefit structures comparable to those of this AEU: Provide also the name(s) of the employer(s), the number(s) and name(s) of the local union(s), the location(s) of the AEU(s), and the number of employees in each AEU.

NOTE: Be sure to provide both the present and past two contracts for both the requested and related increases.

If "Tandem" or wage comparability is claimed, also complete the chart in Worksheet - Tandem Exception, Form S-102A. Also show the average straight-time wage for both units.

---

2. NEWLY ESTABLISHED COMPARABILITY (In straight time rates)

Are these increases intended to bring the subject rates up to those currently being paid for comparable jobs in the area, employer, industry or union? ---------- ☐ ☐

If "Yes," obtain the rates for the jobs in this unit and the comparable jobs for the last five years or two full contract periods, whichever is greater. Identify source(s) of data.

3. If applicable, was the adjustment for supervisory or salaried personnel necessary to maintain the historical differential between this unit and other employees within the same plant (who are being paid pursuant to existing, non-challenged or approved contracts)? ---------- ☐ ☐

If "Yes" show in an attached schedule the historical five-year pattern of the straight time differentials both in percentage and cents per-hour terms, and the average for the entire five-year period, or any other method that shows provision for equitable treatment, between the two employee units. If amount requested is more than the five-year average, attach additional justification for the additional amount.

4. Is this considered a "package tandem" case? ---------- ☐ ☐

NOTE: "Package Tandem" - often in negotiating contracts, various employee units will negotiate varying increases; however, over the period of the contract, the total contract cost will be the same in the cents-per-hour increases. While this is not tandem according to regulations, it is something that the COLC may want to consider in reviewing the wage increase.

If "Yes," complete and attach a schedule showing all wage and benefit increases for the last five years or two full contract periods, whichever is greater, with an explanation or justification of why the differing amount and/or timing of the increases was negotiated and the dollar amount of the contract settlement (broken down into wages and qualified benefits).

5. Did the case involve a "new plant" situation, where:

(a) "Tandem" cannot be demonstrated for the required period of time, or ---------- ☐ ☐

(b) Initial rates were established lower than those for comparable jobs in order to allow the firm to establish itself (this should be fully documented), or company set low rates initially and then the employees were unionized, or ---------- ☐ ☐

(c) Are these rates above or below rates for comparable jobs within the industry or labor market area? ---------- ☐ ☐

If "Yes," explain and document.

6. Did parties claim exception on the basis of changes in work-rules? If so, provide the following information as necessary. ☐ ☐

(a) The results of new contract language?

(b) Which rules were changed and when are (were) they effective?

(c) Any new or revised "job security" clauses in the contract?

(d) The percentage of the work force affected by the changes?

(e) Can the parties calculate the anticipated cost savings? What does this translate to in cents/hour or percentage terms? Show these calculations.

Wage Reopener Provisions Worksheet — Section 201.35(c)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

This schedule should be used to report increases under Section 201.35(c). Eligibility for this exception is not established unless all of the following questions can be answered yes.

	Yes	No
1. Was a wage reopener provision incorporated in a collective bargaining agreement that existed before August 15, 1971?-------	[]	[]
2. Did the contract set a specific date for reopening wage and/or fringe benefits negotiations?-------------------------------	[]	[]

a) If yes, give date ____________________

b) Date wage renegotiations were in fact reopened ____________________

3. Did the contract provide for specific termination other than by the reopener provision?-----------------------------------	[]	[]

Remarks

Form **S-102F Test** (3-73)

Department of the Treasury · Internal Revenue Service

Qualified Benefits Standards Worksheet — Section 201.59

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

Part I. Catch-up calculations

1. Give the ending date of the unit's first control year. ______________

2. For the control year listed in Part II, list the date and hourly cost of adjustments (from new or improved benefit plans, from secondary effects of increases in straight-time rates, or from increases in employer contributions attributable to decreases in employee contributions) during the period from November 14, 1968 to November 13, 1971, and give the base compensation rate in effect during the payroll period immediately prior to each of the adjustments. Determine the percentage increase for each of the adjustments by dividing the hourly cost by the appropriate base compensation rate.1/

(a) Effective date	(b) Cost of the adjustment per man-hour worked during period immediately following the qualified benefit adjustment	(c) Base compensation rate in effect during the payroll period immediately prior to each of the qualified benefit adjustments. 1/	(d) Percent Col. (b) divided by Col. (c))

3. Sum of the percentage increases during the three-year period as calculated in column "d" above. ---------------------------- ____%

4. Subtract the total on line 3 from 1.5%. ---------------------------- ____%

To the extent that some part of the possible 1.5% catch-up was not used during the first control year of a new contract or pay practice, the excess may be used in the second control year but not thereafter.

1/ Calculated in accordance with the methodology shown on Form PB-3 at Part IV, A.

Part II. Eligibility for 5.0% rule on Form PB-3A ONLY:

5. Employer cost of qualified benefits in the base year as calculated by the method of Form PB-3, line 23(6)(a). ---------------- $______

6. Total man-hours worked during the base year. (Use either (a) exact man-hours worked, (b) a reasonable estimate, or (c) the product of the man-hours reported on line 17 of Form PB-3A multiplied by the number of pay periods per year multiplied by 0.931.) ---------------- ______hours

7. Employer cost of qualified benefits per man-hour worked (line 5 divided by line 6). ---------------- $______

8. Average straight-time hourly rate (from line 19 of Form PB-3A) multiplied by the 1.9 benefit factor. ---------------- $______

9. Base period qualified benefits as a percent of calculated base compensation rate (line 7 divided by line 8). ---------------- ______%

Part III. Qualified benefits summary

10. Carryover from prior control year (percent available but not used). 1/
    - a. Catch-up allowance. ---------------- ______%
    - b. 0.7% Standard. ---------------- ______%

11. Standard for this year [either: (a) 0.7%, or (b) the smaller of 5.0% or the difference between the percentage of qualified benefits in the base year (from line 9 above) and 10%]. Do not enter an amount greater than the total qualified benefit percentage adjustment requested. ---------------- ______%

12. Total available for this year (sum of lines 10a, 10b, and 11). 2/ ---------------- ______%

1/ Attach a copy of Form PB-3 or PB-3A for the first control year showing qualified benefit calculations and adjustments.

2/ NOTE: If 11(b) is used, the total contribution to qualified benefits may not exceed 10% after the adjustments have been made.

Cost of Living Allowance Worksheet — Section 201.64(a)

Employer's or Association's Legal Name	COLC Control Number	Date
	IRS Control Number	

1. Provide a copy of the cost of living formula in effect during the control year listed in Part II with this submission.

2. List the cost of living allowances during the control year.

Effective date of adjustment (a)	Number of months during the control year that the adjustment will be in effect (b)	Col. (b) divided by 12 (rounded to 1 decimal place) (c)	Amount of adjustment (d)	Adjusted amount of increases (Col. (c) times Col. (d)) (e)

Enter adjusted amounts from Column (e) onto line 20 of Form PB-3 or line 22 of Form PB-3A.

Form **S-102H Test** (3-73) Department of the Treasury - Internal Revenue Service

State and Local Government Worksheet--Subpart H

Governmental Unit

COLC Control Number

Date

IRS Control Number

Part I. Scope -- 201.91

Pay adjustments affecting State and local government employees generally are subject to the same regulations which apply to private sector employees. However, Subpart H modifies the regulations to take into account certain unique compensation practices in the public sector. These special rules apply to: certification procedure (201.93), public officials whose salaries are prohibited by law from being increased during a term of office (201.94), qualified public employee benefit plans (201.95), and State mandated pay adjustments (201.96). When provisions of Subpart H apply to an adjustment under investigation, use the appropriate Part(s) of this Worksheet in addition to other applicable S-102 worksheets.

Part II. Certification of Pay Adjustments -- 201.93

List all certifications submitted by the governmental unit to the Pay Board pertaining to the pay adjustment being investigated:

	Date Submitted	AEU(s) Covered	Control Year
1.			
2.			
3.			

Attach a copy of each certification, if available.

Part III. Multiple Standard for Certain Public Officials -- Section 201.94

ELIGIBILITY UNDER THIS SECTION IS ESTABLISHED ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

		Conditions Met? Yes	 No
1.	The employee is an elected or appointed government official. ------------------------	☐	☐
2.	The employing authority has elected not to include the official in any other AEU. ----	☐	☐
3.	The increase is not a State mandated pay adjustment within the meaning of 201.96.-----	☐	☐
4.	The official was prohibited by law (constitution, ~~statute~~, charter, ~~etc.~~) from receiving an increase in salary (other than an increase in fringe benefits) for a period of more than 12 months immediately preceeding the effective date of an increase pursuant to this section. --	☐	☐
5.	The salary paid to the official (other than fringe benefits) has not been increased during the prohibition period. --	☐	☐

[illegible]

If eligibility has been established, calculate the increase permissible under this Section as follows:

6. Prohibition period (expressed in years and fractions thereof). ---------------------- ______years.

7. Applicable "multiple standard" (line 6 multiplied by 5.5) ---------------------------- ______ %

8 Base period compensation (compensation paid to official during first pay period following the beginning of the prohibition period; include all items considered in the calculation of "base compensation rate"). -- $________

9. Line 8 multiplied by line 7. -- $________

10. Increase in fringe benefits put into effect during prohibition period. -------------- $________

11. Line 9 minus line 10. --- $________

12. Additional increase permissible under "qualified benefits standard" ----------------- $________

13. Total increase permissible ~~under this section~~ (line 11 plus line 12) ---------------- $________

14. Total increase which has been put into effect. -------------------------------------- $________

If the amount in line 14 is greater than the amount in line 13, check for applicability of Section 201.30 (Case-by Case Determination of Exceptions) and complete Worksheet S-102E, as well as other worksheets used for wage comparability under Section 201.30, e.g. Tandem Wage Relationship, Essential Employees, etc.

Part IV. Qualified Public Employee Benefit Plans -- Section 201.95

A qualified public employee benefit plan is not required to meet the technical requirements for qualification under section 401(a), section 401(b), or section 404(a) of the Internal Revenue Code. However, such plan must have been established by a government for the exclusive benefit of its employees and their beneficiaries, and employer contribution must be: (1) made to a trust, (2) used as premiums to purchase annuity or retirement insurance contracts or used to purchase retirement bonds, or (3) otherwise permanently set aside for deferred compensation in any manner other than funding on a pay-as-you-go basis. A plan will not be considered as qualified if employer contributions are paid to the jurisdiction's general fund for later disbursement to the beneficiaries.

Use Form S-1026 (Qualified Benefits Standards Worksheet -- Section 201.59) to determine the extent to which employer contributions to a qualified public employee benefit plan may be treated as excluded contributions.

Part V. State Mandated Pay Adjustments -- Section 201.96

Section 201.96 applies only to pay adjustments which are legally required by action of a State government applicable to officials or employees of local governments. This section is not applicable to pay adjustments of officials or employees of a State government.

If Section 201.96 is applicable, provide the information requested below. If various pay levels are involved, provide separate computations for each level:

1. Level of ~~State mandated~~ wage, salary, or benefit after day of State mandate implemented ------------------------ $__________

2. Level of wage, salary, or benefit in effect on base date (the day before the pay adjustment was implemented) ------------------------ $__________

3. Item 1 less item 2 ------------------------ $__________

4. Percent increase (item 3 divided by item 2) ------------------------ __________%

Attach copies of relevant State legislative acts or State administrative orders which provide for the present and previous mandated levels.

Roll-up - for computational purposes, the following formula may be used for computing roll-up (where there is a direct relationship between wage increases and benefit roll-up).

$$\frac{\text{Base year cost for item which rolls up}}{\text{Base year average straight time hour by rate}} \times \text{increase in average straight time hourly rate.}$$

3.23 Theory of Calculations (Sum-of-the-percentages):

Basically, the pay regulations use the sum-of-the-percentages method for calculating percent increases, except for cost-of-living escalator clauses.

General

Under this method, base hourly compensation is established for the base period prior to the control year during which the requested increases are to be effective. Such compensation includes wages and salaries, includable fringe benefits, and qualified fringe benefits. It does not include legally required payments, such as, workmen's compensation and certian other types of payments (see Part II - A - Form PB-3). Each applicant costs his increase on an hourly basis using the distribution of hours reported in the base payroll period and the base year. Time weighting is not allowed except for COLA escalator clauses. That is, an applicant may not value 50¢ per hour payable during the second half of the year as 25¢. However, increased payments needed to fund existing levels of qualified benefits are not included in the computation. (Example: Increased employer contributions to a hospitalization benefit policy due to rising hospital costs for the same benefits are not included).

Example A: Unit has base year compensation of $4.50 composed of $3.50 in straight-time wages, 30¢ in includable fringes, and 20¢ in qualified benefits. Its control year begins February 1, 1972. It wishes to increase straight-time wages by 10¢, increase includable fringes by 5¢, and increase new qualified benefits by 15¢, all on February 1. No other increases are scheduled during the first control year. Percentage computation is -

$$\frac{.10 + .05 + .15}{4.00} = \frac{.15 + .15}{4.00} = 7.5\% \begin{array}{l}(3.8\% \text{ on wages + includables})\\(3.7\% \text{ on qualified benefits})\end{array}$$

Moral: The time of increases within a control year does not affect the percentage calculation.

Rationale: This methodology compares the hourly compensation rate as it exists prior to the control year during which the requested increases are to be effective and at the very end of the control year. This best reflects the impact on costs and prices, i.e., it is end-of-period costs which will contribute to the end-of-period pricing decision.

The alternative of time-weighting would encourage backloading of first-year increases. If the Rules permitted time-weighting, a 55% increase effective only after 90% of the year had passed would count only as 5.5%. Yet the impact would clearly be inflationary on end-of-period costs, and would inflate the base for the next control year.

3.3 ANALYSIS OF SUBPART E - TITLE 6 CFR (ECONOMIC STABILIZATION) - COMPUTATION RULES

3.31 Determination of Control Year (§ 201.52) -

The C.Y. in a nonunion situation is generally November 14, 1971--November 13, 1972 (First) and November 14, 1972 - November 13, 1973 (Second). In a union situation, the C.Y. generally adopts the anniversary date of the contract. This means that a short C.Y. between November 14, 1971, and the anniversary date of the contract may be created. Thus, during the period November 1971--November 1972, it was possible for a union unit to have two control years. This has the effect of raising the permissible increases during the 12-month Nov.-to-Nov. period.

Example: After an agreement expired on May 31, 1971, a two-year contract was negotiated to begin June 1, 1971. It provided for an 8% increase June 1, 1971 (prior to the program), a deferred increase of 5% on January 1, 1972, and a second deferred increase of 4% on June 1, 1972. The two deferred increases total 9%, but neither will be subject to automatic challenge. This is because the unit has a short control year of November 14, 1971--May 31, 1972, and a second C.Y. of June 1, 1972--May 31, 1973.

Limitations

Once the determination of the first and succeeding control years, as established under the regulation, is made, the specific base date may not be changed unless approved by COLC.

3.32 Formula for computing annual aggregate increase in base compensation (§ 201.53) -

Where it is necessary to determine the annual aggregate increase in the base compensation rate with respect to an appropriate employee unit for any C.Y., the increase is to be stated as a % and it is computed as follows:

the total adjustment during the C.Y. in the average straight-time hourly rate (ASTHR)

PLUS

the total adjustment during the C.Y. in the average hourly benefit rate (AHBR)

DIVIDED BY

the appropriate employee unit's base compensation rate (BCR).

3.33 Base Compensation Rate (B.C.R.) (§ 201.54)

For any C.Y., the rate of base compensation (stated in dollars and cents per hour) is the average rate of pay which equals the sum of -

the ASTHR of the appropriate employee unit for Base Payroll period

PLUS

the AHBR of the appropriate employee unit for the base year

3.34 Average Straight-time Hourly Rate and Adjustments (§ 201.55)

The ASTHR is determined by dividing:

the total straight-time payroll expenditures

BY

the total man-hours paid for (including all paid leave hours).

Payroll expenditures and man-hours paid for are determined for the base payroll period. If the base payroll is not representative of the straight-time earnings structure of the unit, a different payroll period must be chosen.

Part II A (16 and 17) of PB-3 sets forth what items should be included in calculating payroll expenditures and paid man-hours. For example, include S/T pay for overtime, weekends, etc., but exclude any premiums or differentials above the S/T rate.

The total adjustments in the ASTHR for an appropriate employee unit is the amount of increase, if any, of the rate in effect during the last payroll period of the C.Y. following the base date compared to the rate in effect during the base payroll period.

3.35 Computation Method - ASTHR Merit and Other (§ 201.56 and 201.57)

The regulations set forth two methods for calculating adjustments in the average straight-time hourly rate: the "double snapshot" method and the "ice-cube" method. These two methods are mutually exclusive. The determining factor with respect to whether increases paid to members of an appropriate employee unit are computed according to the "ice-cube" method or the "double snapshot" method is generally the existence of either a formal or informal merit plan on November 13, 1971.

3.351 Ice-Cube Method

A. The ice-cube method is used in all pay practice or contract situations for the computation of pay adjustments where "merit" is not a factor (e.g. across-the-board increases). However, the "ice-cube" method is used where an appropriate employee unit not covered by a merit plan on November 13, 1971, subsequently becomes subject to either a formal or informal merit practice.

B. The ice-cube method reflects the "sum of the percentages" method of computation adopted by the Pay Board on December 10, 1971. Computation of adjustments in the average straight-time hourly rate assume that there is no change in the composition of the workforce during the control year (i.e., the composition of the workforce is "frozen" as of the base date).

The basic principle of the ice-cube method is that the control year experience is considered to be identical to that which existed in the base payroll period (or base year in the case of benefits). For purposes of adjustments in the average straight-time hourly rate, the assumption of identical control year and base payroll period experience relates to the following:

(1) distribution and number of employees in each job classification or at each pay rate;

(2) number of hours paid for and the number of hours worked; and

(3) the distribution and number of employees by years of service.

The control year adjustment in the average straight-time hourly rate for an appropriate employee unit is the amount by which the projected average straight-time hourly rate at the end of the control year exceeds the average straight-time hourly rate existing during the base payroll period.

C. The projection is based on the workforce composition, etc., which existed during the base payroll period. The projected average straight-time hourly rate (ASTHR) at the end of the control year is the division of the "projected straight-time payroll expenditures" (PSTPE) for the last payroll period of the control year by the total man-hours paid for (tmhpf) during the base payroll period:

$$\text{Projected (ASTHR)} = \frac{\text{(PSTPE) end of control year}}{\text{(tmhpf) base payroll period}}$$

3.352 The "Double Snapshot" Method

A. The double snapshot method applies to pay adjustments pursuant to merit plans which --

(1) were in existence on November 13, 1971,

(2) succeed a merit practice or contract provision in existence on November 13, 1971, or

(3) were established, with respect to a new appropriate employee unit, in a company plant or other business entity which came into existence on or after November 14, 1971, provided, however, such method of computation shall not be used in the first control year the new unit came into existence.

B. Definition of Merit Plan - A merit plan is a system for paying wage and salary increases which is founded upon a judgement or an evaluation of an individual employee's performance rather than some other factor (such as increased cost-of-living or the length of service of an employee). A merit plan usually provides that an employee may be granted an increase which varies in amount depending on the results of the employer's evaluation of employee's performance.

In the absence of formal plans, employers who give individual increases to their employees as "they deserve them" (rather than a general increase to all employees in a job category) do so by way of a "merit plan." These informal "merit plans" are not necessarily entitled to the narrow qualified merit exception. It is important to categorize such informal subjective evaluations as "merit plans" because the appropriate computation method, the "double snapshot," applies to all formal or informal "merit plans," in existence on November 13, 1971.

Where an employer gives general increases, or end-of-year bonuses based on performances, he does not have a "merit plan" within the context of these regulations; such employers should calculate general increases according to the "ice-cube" method or should apply the executive and variable compensation regulations pertaining to the controls on incentive bonuses. If an employer has any discretion as to the amount of the adjustment once the employee's performance has been judged to be satisfactory, the adjustment is a merit increase rather than a longevity increase. Even though length of service pay determine when an employee is reviewed, if the amount of the increase is discretionary, then it is merit pay rather than longevity.

A portion of merit pay may not be factored out and treated as longevity increases.

Any change of terms of a merit plan which was in existence on November 13, 1971, will not alter the fact that it is subject to the "double snapshot" computation method. If an employer changes the amounts of increases, the time intervals for review, the jobs to which the plan applies or other terms of the plan, the computation of adjustments in the average straight-time hourly rate is still made in accordance with the "double snapshot" method.

Example 1: An employer has a plan for making wage and salary increases which gives an employee a $100 increase each year for satisfactory performance, $125 increase for good performance, or $150 for excellent performance. Such a plan would entail an "affirmative exercise of employer discretion or subjective evaluation." The $100 increases for satisfactory performance will not be considered longevity but will be considered merit because of their inclusion in a plan which distinguishes the size of increase by how well an employee has performed.

Example 2: An employer has a plan for making wage and salary increases which guarantees each employee at least a 10 cents per hour increase for each additional year of service with discretion of the employer to give up to a 25 cents an hour increase for superior performance. This plan also would entail affirmative exercise of employer discretion or subjective evaluation. The 10 cent per hour increases will not be considered longevity.

Example 3: An employer has a plan for paying increases which gives each employee a $20 per week increase for satisfactory performance for each of his first three years of service; employees during the first three years of service receive no other increases except a cost-of-living or general increase; after three years of service under the plan employees may receive from $10 per week to a $40 per week increase resulting from an annual merit review. The $20 per week increases paid during the first three years of service of an employee will be considered longevity increases because they are separate and distinct with no affirmative exercise of discretion or subjective evaluation.

The distinction between merit and longevity plans is an important one because longevity increases may be excluded from computations, while merit increases must be charged against the 5.5% standard.

Once it has been determined that a merit plan exists, increases are computed as set forth below.

C. Double-snapshot Method - The ice-cube method "freezes" the composition of the workforce existing during the base payroll period. The ice-cube method is based on the principle of "job rates" and general (i.e. across-the-board) increases.

The double snapshot method is used to calculate aggregate increases in the average straight-time hourly rate of appropriate employee units covered by formal or informal merit plans (in existence on November 13, 1971) where the increases are granted at various times throughout the control year (e.g. anniversary dates of employment) and the amount of the increases vary depending upon a subjective evaluation of an employee's performance. Unlike the ice-cube method, the double snapshot method does not assume that control year experience will be identical to the base payroll period experience.

The "double snapshot" is a comparison of the actual average straight-time hourly rate at the end of the control year with the base payroll period average straight-time hourly rate. The amount by which the base payroll period rate (one "snapshot") is exceeded by the average straight-time hourly rate in existence at the end of the control year (second "snapshot") represents the control year adjustment. The calculation of the control year adjustment in the average straight-time hourly rate by the double snapshot method can be illustrated as follows:

$$(\text{ASTHR}) = \frac{(\text{TSTPE})e}{(\text{tmhpf})e} \text{ less } \frac{(\text{TSTPE})b}{(\text{tmhpf})b}$$

where

(ASTHR) = adjustment in the average straight-time hourly rate

(TSTPE) = total straight-time payroll expenditures

(tmhpf) = total man-hours paid for

e = last pay period of the control year
e = base payroll period

The formula illustrated above is the compliance test. The comparison of the actual ending and beginning average straight-time hourly rate, unlike the ice-cube method, reflects changes in the composition of the workforce (e.g. new hires, separations, promotions, changes in average skill levels, etc.).

For purposes of prenotification and reporting, the applicant is required to estimate the total straight-time payroll expenditures and total man-hours paid for during the last payroll period in the control year.

The projections made pursuant to the double snapshot method should reflect any impact on the average straight-time hourly rate which result from changes in the composition of the workforce. Changes in the composition of the workforce will have two general effects:

1. "erosion" or "slippage": the average straight-time hourly rate will tend to decrease during the control year due to normal turnover where higher rated employees retire or leave are replaced by employees at lower rates. An expansion of the workforce will tend to depress the average straight-time hourly rate since new employees are usually hired at the starting (or minimum) rates for a job.

2. "creep": increases in the average straight-time hourly rate may be due to a contraction of the workforce where lower rated employees are separated. "Creep" may also occur due to the expansion of the workforce at higher rated jobs.

3.353 Average Hourly Benefit Rate (§ 201.58 and 201.59)

For the purpose of determining the base compensation rate, the average hourly benefit rate of an appropriate employee unit will be an amount (stated in dollars and cents per hour) determined by dividing --

The total cost of benefits which would have been incurred computed by costing each benefit item at the rate in effect on the last day of the base year

BY

The total number of man hours actually worked (excluding paid leave hours) during the base year.

In computing the total cost of benefits count as included benefits those enumerated at Part III item 22 of the PB-3 and as qualified benefits those enumerated at Part III item 23 of the PB-3. Cost benefits as if those that will be in existence at the end of the control year had been implemented at the beginning of the year.

Adjustments in benefits, regardless of whether or not there is a merit plan, are computed on the "ice cube" basis; that is, benefits in effect at the end of the control year are costed assuming no change in the work force composition or years of service. This total cost is then divided by total number of man-hours worked during the base year. The result is the control year AHBR.

The total adjustment in the AHBR for an appropriate employee unit is the amount of increase, if any, above the rate in effect at the end of the base year. Any amounts saved because of a decrease in the benefit costs or because of an elimination or reduction in benefit levels may be used to offset other increased costs due to new or improved benefits.

3.354 Qualified Benefit Standard - The qualified benefit standard represents the amount of increase in the base compensation rate attributable to increased costs of qualified benefit plans which would not be "unreasonably inconsistent" with the criteria established in the Act. It was felt that the parameters of the turn "unreasonably inconsistent" could not equitably or administratively be defined with reference to particular benefit levels because of the substantial variance in employee benefit practices or plans. The Qualified benefit standard was based on employer cost in order to reflect cost pressures on prices, relative value of qualified benefits which vary directly with employee earnings, and administrative considerations related to the need for public understanding and processing of applications for increases.

Increased employer costs for qualified benefit plans are excluded from the computation of chargeable increases to the extent that these increases do not exceed the qualified benefit standard.

The standard may vary from one control year to the next depending on the amount that the cost of qualified benefit plans have increased in prior years, and depending on the ratio of the AHQBR to the total base compensation rate. The qualified benefit standard is a percentage amount equal to the greater of -

(a) 0.7% of the BCR plus whatever "catch-up" percentage (limited to 1.5%) of the BCR.

OR

(b) 5% of the BCR to the extent that the resulting average hourly qualified benefit rate does not exceed 10% of the BCR.

Additionally, the QB standard includes certain "credits" where the total amount of the QB standard was not utilized in prior C.Y.'s.

The parties may elect the most favorable alternative (either the 0.7% and maximum 1.5% catchup or the 5% rule) during any control year.

A more detailed outline of the Qualified Benefit Standard is contained in § 201.59(g). Also, a copy of Form S-102G (test) - Qualified Benefits Standards Worksheet - is attached. The worksheet is part of the package (S-102 Test) that has been developed for use in pay investigations. The worksheet is self-explanatory and provides a logical sequence of questions to aid in determining compliance with Subpart B of the regulations. Before completing the form, the investigator should be familiar with the QB standard and alternatives outlined above.

3.4 PB-3 AND PB-3A

3.41 Introduction

Form PB-3 - Application for General Wage, Salary, and Benefit Adjustments was issued in April 1972. It is a revision of Forms PB-1 and 2 and supersedes them and is applicable to both union and nonunion situations. However, the form is generally not to be used for the construction industries, or for executive or variable compensation plans covered by Subpart F of the Pay Board Regulations.

Form PB-3 was to expire initially on April 30, 1973, however, COLC has received an extension from the Office of Management and Budget. A comprehensive instruction sheet is available for assistance in completing a Form PB-3.

In order to minimize the record review, time and cost required to complete the PB-3, an optional Form PB-3A was developed.

The PB-3A form eliminates the need to examine the payroll and compensation records for the entire year by only requiring the employer to provide straight-time earnings data for the most recent payroll period prior to the Control Year.

The ASTHR provided by the employer is then multiplied by 1.07 and the resulting figure is used as the BCR on which the percentage of wage and included benefit adjustment is calculated.

In addition, the ASTHR is multiplied by 1.19 to arrive at the BCR from which to measure the qualified benefit changes.

The instructions for the regular (long form) PB-3 also serves as instructions for the short form PB-3A.

The following examples illustrate the preparation of Form PB-3 and PB-3A using the computation rules previously discussed.

3.42 The Special Machine Co.

1. This employer has an appropriate employee unit which consists of 40 equipment adjusters earning $4.00, $5.00 and $6.00 per hour. Benefits to this unit consist of:

(a) a pension plan to which the employer contributes 8 percent of straight-line earnings;

(b) life insurance which costs the employer $50 per $1,000, and which is given to employees based on their hourly earning range as follows: $4.00 per hour or less, $4,000; $4.01 to $5.99, $5,000; $6.00 and over, $6,000;

(c) Blue Cross and Blue Shield which costs the employer $30 per employee;

(d) ten days of annual paid vacation;

(e) five days of annual paid sick leave, and

(f) eight paid holidays.

2. Employees are paid for 2,080 hours per year and actually work 1,896 hours.

3. These employees are not covered by a collective bargaining agreement and have received general wage increases at varying times in the past.

4. On January 1, 1972, the employer implemented the following changes:

(a) a 5 percent increase in straight time hourly rate;

(b) a benefit improvement in his pension plan which increases the cost of the plan by 5 percent of the contribution;

(c) in addition, the cost of Blue Cross and Blue Shield increased 10 percent without any change in benefits.

ANALYSIS OF COMPUTATIONS

The cost of the benefits is determined as follows:

Employees	Straight time hourly rate	Pension	Life Ins.	Blue Cross Blue Shield	Vacation	Sick	Paid Holidays
20	$5.00	$16,640	$5,000	$2,600	$8,000	$4,000	$6,400
10	$4.00	$ 6,656	$2,000	$1,300	$3,200	$1,600	$2,560
10	$6.00	$ 9,984	$3,000	$1,300	$4,800	$2,400	$3,840
Total 40	$5.00 (average)	$33,280	$10,000	$5,200	$16,000	$8,000	$12,800

The cost of the changes would be as follows:

20	25¢ to $5.25 5%	(33,280	0	$260	5%	5%	5%
10	20¢ to $4.20 5%	+ 1,664	$500	130	5%	5%	5%
10	30¢ to $6.30 5%	X 5%)	0	130	5%	5%	5%
40	25¢ to $5.25 $1,664* (average)	$1,747**	$500	$520***	$800*	$400*	$640*

*Pension roll-up costs.

**Improvement cost.

*** creep--increases cost of maintaining existing benefits; cost is excluded from PB-3 computation.

Form **PB-3**
(Revised April 1973)
Pay Board
Washington, D.C.

APPLICATION FOR GENERAL WAGE, SALARY AND BENEFIT ADJUSTMENTS

(Not to be used for adjustments in executive or variable compensation plans covered by Subpart D of Pay Board Regulations.)

OMB 172-R0006

Items 1 and 2 are not to be completed by applicant.	1. IRS Control Number	2. PB Case Number

PART I. — General Information

3. Type of adjustment
   a. ☐ Deferred increase under contract or pay practice existing on or before November 13, 1971.
   b. ☒ Other wage or benefit adjustment.

5. Is this form being filed for exception to the General Wage and Salary Standard?
   a. ☐ Yes b. ☒ No
   (If yes, complete item 6.)

7. During the last 12 months, has a PB form covering any of the employees covered by this application been filed with the Internal Revenue Service or the Pay Board?
   a. ☐ Yes b. ☐ No
   c. IRS control number from previous case
   d. Pay Board case number from previous case
   e. Is this submission intended to be a substitute for one previously filed?
   (a) ☐ Yes (If yes, give reasons in an attachment.)
   (b) ☐ No

10a. Control Year: From Nov. 14, 1971
To Nov. 13, 1972
b. Were these dates selected by exercising an option, under Pay Board regulations, to set your first control year?
(a) ☐ Yes (b) ☒ No
(If yes, describe the basis for the dates in an attachment.)

4. Employees in unit affected by this application
   a. Category (place "X" in appropriate box)
   I ☐ II ☐ III ☒
   b. Exact number of employees on the payroll in pay period reported in item 19 40
   c. Type and location (e.g., salaried employees in Rye, N.Y. plant)

6. Specific exception(s) requested (state exception here, enter percentage claimed on line 40, and describe exception(s), showing detailed calculations, if applicable, supporting the percentage claimed, in an attachment.)
   NONE

8. Industry classification code for employees covered by this application (see instruction sheet)

9. Principal product, activity or service of employer operation
   SPECIAL MACHINE ASSEMBLY

11. In the adjustment being prenotified or reported, will there be a practice of or a contractual agreement to automatically adjust wage rates for changes in the cost of living? a. ☐ Yes b. ☐ No
    (If yes, describe the timing and method of adjustment in an attachment.)
    N/A

12. Have any wage, salary, or benefit adjustments — other than those reported on this form — been made during the control year described at item 10? a. ☐ Yes b. ☒ No
    (If yes, describe the adjustments and their amount in an attachment.)

13. **Employer or Association Making this Application**

a. Legal and trade name (if any)
Special Machine Co., Inc.

b. Employer identification number (IRS)
123-456789

c. Address (number, street, city or town, State and ZIP code)
123 First Ave.
Etcetera, Md. 20760

d. Individual in company or association to be contacted for further information
J. P. Special

e. Telephone (area code and number)
301-123-4567

14. If the employer or association described above is a part of or subsidiary to another employing unit that has a name (legal or trade) different than shown above, complete the following, otherwise skip to item 15.

Parent Company

a. Name
NONE

b. Employer identification number (IRS)

15. If the wage, salary, or benefit adjustments described in this application are being made under the provisions of a collective bargaining agreement, complete the following; otherwise, skip to Part II.

Union

a. Name and affiliation
N/A

b. Address (number, street, city or town, State and ZIP code)

c. Individual in union to be contacted for further information

d. Telephone (area code and number)

e. Date contract was signed

f. Duration of contract:
From To

Form **PB-3**
(April 1972)
Pay Board
Washington, D.C.

APPLICATION FOR GENERAL WAGE, SALARY AND BENEFIT ADJUSTMENTS

(Not to be used for adjustments in executive or variable compensation plans covered by Subpart D of Pay Board Regulations.)

OMB 167-R/0001

Approval expires: 4-30-73

Items 1 and 2 are not to be completed by applicant.

1. IRS Control Number

2. PB Case Number

PART I. — General Information

3. Type of adjustment
   - a. ☐ Deferred increase under contract or pay practice existing on or before November 13, 1971.
   - b. ☒ Other wage or benefit adjustment

5. Is this form being filed for exception to the General Wage and Salary Standard?
   a. ☐ Yes b. ☒ No
   (If yes, complete item 6.)

7. During the last 12 months, has a PB form covering any of the employees covered by this application been filed with the Internal Revenue Service or the Pay Board?
   a. ☐ Yes b. ☐ No
   - c. IRS control number from previous case
   - d. Pay Board case number from previous case
   - e. Is this submission intended to be a substitute for one previously filed?
     (a) ☐ Yes (If yes, give reasons in an attachment.)
     (b) ☐ No

10a. Control Year From Nov. 14, 1971
To Nov. 13, 1972

b. Were these dates selected by exercising an option, under Pay Board regulations, to set your first control year?
(a) ☐ Yes (b) ☒ No
(If yes, describe the basis for the dates in an attachment.)

4. Employees in unit affected by this application
   - a. Category (place "X" in appropriate box)
     I ☐ II ☐ III ☒
   - b. Exact number of employees on the payroll in pay period reported in item 19 40
   - c. Type and location (e.g., salaried employees in Rye, N.Y. plant)

6. Specific exception(s) requested (state exception here, enter percentage claimed on line 40, and describe exception(s), showing detailed calculations, if applicable, supporting the percentage claimed, in an attachment.)
   NONE

8. Industry classification code for employees covered by this application (see instruction sheet)

9. Principal product, activity or service of employer operation
   Special Machine Assembly

11. In the adjustment being prenotified or reported, will there be a practice of or a contractual agreement to automatically adjust wage rates for changes in the cost of living? a. ☐ Yes b. ☐ No
    (If yes, describe the timing and method of adjustment in an attachment.) N/A

12. Have any wage, salary, or benefit adjustments — other than those reported on this form — been made during the control year described at item 10? a. ☐ Yes b. ☒ No
    (If yes, describe the adjustments and their amount in an attachment.)

13. **Employer or Association Making this Application**

a. Legal and trade name (if any)
Special Machine Co., Inc.

b. Employer identification number (IRS)
123-456789

c. Address (number, street, city or town, State and ZIP code)
123 First Ave.
Etcetera, Md. 20760

d. Individual in company or association to be contacted for further information
J. P. Special

e. Telephone (area code and number)
301-123-4567

14. If the employer or association described above is a part of or subsidiary to another employing unit that has a name (legal or trade) different than shown above, complete the following, otherwise, skip to item 15.

Parent Company

a. Name
NONE

b. Employer identification number (IRS)

15. If the wage, salary, or benefit adjustments described in this application are being made under the provisions of a collective bargaining agreement, complete the following; otherwise, skip to Part II

Union

a. Name and affiliation
Not Applicable

b. Address (number, street, city or town, State and ZIP code)

c. Individual in union to be contacted for further information

d. Telephone (area code and number)

e. Date contract was signed

f. Duration of contract:
From To

(over)

PART II. — Straight-Time Hourly Rates and Hours

A. Base Payroll Period

16. Total payroll expenditures at straight-time rates during the most recent pay period available prior to the control year. (Include straight time pay for overtime, weekend and holiday work and all paid leave hours, but exclude any premiums or differentials above the straight-time day shift hourly rates for such time. Also exclude all payments to workers, funds, or insurance or other carriers, for nonproduction bonuses, severance or supplemental unemployment benefits, pay as you go pension plans, life insurance, savings and thrift plans, other health, welfare, pension or deferred profit sharing plans; and all legally required expenditures (e.g., for social security, unemployment insurance, and workmen's compensation).

If the base payroll period for which data are requested is not a representative one, for seasonality or other reasons, provide data for a representative period and explain in an attachment why data for the most recent period were not reported. . . . . $ 8,000.00

17. Total man-hours paid for (including all paid leave) during this payroll period. Include actual, not boosted, overtime and other hours equivalent to the straight-time payments noted on line 16. (In the absence of fixed hours for salaried or other employees, make reasonable estimates of hours paid for during the payroll period and explain the basis for the estimate in an attachment.) . . . . 1,600 hrs

18. Average straight-time hourly rate (line 16 divided by line 17). (Enter this amount on line 24, Part IV.) $ 5.00

19. Pay period used From Nov. 7, 1971 To Nov. 13, 1971

B. Control Year Adjustments in Straight-Time Hourly Rates

20. In columns (b), (c), and (d) below, list amounts of all straight-time hourly rate adjustments (including skill and inequity adjustments) *in cents per man-hour.* Show corresponding effective dates in column (a). For merit adjustments made on a continuing basis throughout the year — indicate "various."

If changes are being made in piece or incentive rates, enter the increase in hourly earnings, if any, that the average worker will receive during the average hour (assuming no change in worker output). Where control year adjustments vary among employees, indicate overall average increase in cents per hour prorated over all employees in the unit on the basis of man-hours paid for during the base payroll period.

Make all adjustment calculations, except for those in column (c), assuming that there will be no change in the composition of the unit between the base date and the end of the control year or in the composition or structure of hours in the base and control years.

Pay adjustments made under the provisions of merit plans or practices entered into since November 13, 1971, are to be reported as a general wage and salary adjustment in column (d). For such plans, enter "M" next to the adjustment entry.

Pay adjustments, being made for employees under an employment contract or practice, based on, or that includes a merit component, including discretionary changes affecting individual employees on a variable timing basis and changes under plans instituted prior to November 14, 1971, that do not qualify for treatment as an exception under Pay Board Regulations, are to be reported in column (c) below as follows: 1) Estimate what the average straight-time hourly rate will be during the pay period ending on or immediately preceding the last day of the control year. 2) Subtract the average straight-time hourly rate in the base period from that estimate. 3) Enter the remainder in column (c). Also, complete column (b) on the basis of the stable work force assumption described above. Certain merit adjustments may qualify for treatment as an exception under Pay Board regulations. If you claim such treatment, so indicate in item 6, Part I and provide details in an attachment.

See instructions for information about nonchargeable adjustments which should not be reported below.

	Effective Date (a)	Adjustments under merit plans (other than those adopted on or after November 14, 1971)		General wage and other adjustments (including skill and inequity, and adjustments under merit plans adopted on or after November 14, 1971) (d)
		Projected change on the basis of a stable work force (b)	Estimated adjustment taking turnover and other factors into consideration (c)	
(1)	5% General Wage Increase - Jan. 1, 1972	$	$	$ 0.25
(2)				
(3)				
(4)				
(5)				
(6)	TOTAL			

(7) **Control Year Adjustment** — sum of (c) and (d) *(Enter this amount on line 29, Part IV)* . . . . ▶ $ 0.25

PART III. — Base Year Man-Hours and Benefit Expenditures in the Base and Control Year

Enter on line 21 the total man-hours worked by the employees in the unit covered by this application. (Exclude paid leave hours and do not boost overtime or other hours to reflect premium payments.) Report for the 12-month period ending on the base date prior to the control year in question (as shown at item 10(a)).

21. Base Year Man-hours Worked 75,840 Hours

Report in items 22 and 23 employer payments to or on behalf of workers (including employer payments to trust funds, insurance companies and other carriers) for existing benefits, for improvements in existing benefits, for new benefits, and for changes in existing benefits due solely to changes in the rate of employee compensation. (Do not report payments by trust funds, insurance companies and other carriers to workers. Also exclude expenditures for those items that are legally required — such as social security, workmen's compensation and unemployment insurance. Also exclude all employee contributions including those withheld by the employer.)

If exact expenditures (contributions) are not available, report your best estimate, and indicate by marking "EST." Estimate costs of improvements in existing includable benefits by projecting existing cost levels, assuming no change in the composition of the work force, in the work schedule, and in the number of hours actually worked. In the case of pension and other benefits, the funding of which is based on actuarial estimates, provide data for the control year based on the same assumptions and on the same funding basis as was used in making the base year calculations.

In calculating base year and control year expenditures, make the calculations on the basis of the benefits existing at the end of each year. Thus, if benefits were raised during the base year, assume that the cost of the higher benefits existed throughout the year. Similarly, if benefits in the control year are to be raised at the end of the year, project costs as if the higher benefit had existed throughout the entire year. In items 22 and 23, do not report additional control year expenditures or contributions required because of changes in cost needed to maintain base year benefits. If a plan is newly introduced, make your best estimate.

22. Included Benefits

	Type of benefit	Total expenditures for: Base year (a)	Total expenditures for: Control year (b)
Optional Fill-in	(1) Shift differentials	$ -0-	$ -0-
	(2) Overtime, weekend and holiday premiums	-0-	-0-
	(3) Vacations (include bonuses)	16,000.	16,800.
	(4) Holidays	12,800.	13,440.
	(5) Sick leave	8,000.	8,400.
	(6) Other leave (funeral, jury, military, voting, etc.)	-0-	-0-
	(7) Bonuses, other than vacation and those executive or variable compensation plans or practices described in the instructions	-0-	-0-
	(8) Severance pay and supplemental unemployment benefits	-0-	-0-
	(9) Pay-as-you-go pension plans	-0-	-0-
	(10) Other benefits excluding those reportable in item 23, below, and those variable compensation plans or practices described in the instructions. (Specify)		
	(11) Total, lines (1) through (10)	$36,800.	$38,640.
Mandatory Fill-in	Hourly expenditures for included benefits: (12) Control year (line (11b) above divided by man-hours from line 21, Part III)		$0.509
	(13) Base year (line (11a) above divided by man-hours from line 21, Part III). (Enter results on line 25, Part IV)		$0.485
	(14) Control year adjustment — (line (12) minus line (13)). (Enter results on line 30, Part IV)		$0.024

23. Qualified Benefits

	Type of benefits (Report here data for only those plans which qualify under the provisions of Section 203(g) of the Economic Stabilization Act of 1970, as amended. Data for all other benefits are to be reported in item 22.)	Employer Contributions in the Base year (a)	Control year: Extra cost of base year benefits as a result of wage changes (shown in Part II B) (b)	Control year: Extra cost of new and improved benefits (c)
Optional Fill-in	(1) Life insurance	$10,000.	$ 500.	$ -0-
	(2) Sickness and accident benefits	-0-	-0-	-0-
	(3) Other group insurance, health and welfare plans	5,200.	-0-	-0-
	(4) Annuity or funded pensions (including deferred profit sharing)	33,280.	1,664.	1,747.
	(5) Other (specify)	-0-	-0-	-0-
	(6) Total, lines (1) through (5)	$48,480.	$2,164.	$1,747.
Mandatory Fill-in	(7) Total (line 6) divided by man-hours from line 21, Part III: (a) Base year (Enter results on line 26, Part IV)	$ 0.639		
	(b) Control year		$ 0.028	$ 0.023
	(8) Sum of line (7)(b) columns (b) and (c)			$ 0.251
	(9) Cost savings in control year (in cents per base year working hour) on base year benefits attributable to favorable plan experience in the base or prior years or to plan changes. (If the savings are greater than the amount shown on (8), enter the amount shown on (8)			$ -0-
	(10) Increased cost of qualified benefits (line (8) minus line (9)) (Enter results on line 32, Part IV)			$0.051

PART IV. — Computation of Percent Increase

A. Base Period

24. Average straight-time hourly rate (from line 18, Part II)	$ 5.000
25. Average hourly expenditure rate for included benefits (from line 22(13), Part III)	$ 0.485
26. Average hourly expenditure rate for qualified benefits (from line 23(7)(a), Part III)	$ 0.639
27. Base compensation rate (sum of lines 24, 25, and 26)	$ 6.124

B. Calculation of Base Period Qualified Benefit Percentage

28. Base period qualified benefits as a percent of base compensation rate (line 26 divided by line 27, rounded to one decimal place)	10.4 %

C. Control Year Adjustments:

29. Straight-time hourly rate adjustment (from line 20(7), Part II)	$ 0.250
30. Included benefit adjustment (from line 22(14), Part III)	$ 0.024
31. Hourly rate and included benefit adjustments (sum of lines 29 and 30)	$ 0.274
32. Qualified benefit adjustment (from line 23(10), Part III)	$ 0.051
33. Total adjustments (sum of lines 31 and 32)	$ 0.325

D. Adjustments as Percent of Base Compensation (Round to One Decimal Place)

34. Hourly rate and included benefit adjustments (line 31) divided by base compensation rate (line 27)	4.5 %
35. Qualified benefit adjustment (line 32) divided by base compensation rate (line 27)	0.8 %
36. Total percent adjustment (sum of lines 34 and 35)	5.3 %

E. Calculation of Chargeable Control Year Adjustments and Offsetting Exceptions, if any (Round to One Decimal Place)

37. Percent offset against qualified benefit adjustment:

a. Basis(es) for claim (place "X" in appropriate box(es))

(1) ☐ 0.7 percent rule, (2) ☐ 5 percent rule, (3) ☐ catch-up (not more than 1.5 percent),
(4) ☐ Other
If you checked (3) or (4), describe the basis(es) for your claim in an attachment containing (as appropriate) detailed supporting calculations and an explanation of the method used in calculating.

b. Percent claimed (not to exceed percent on line 35)	0.7 %
38. Qualified benefit increase chargeable against the general wage and salary standard (line 35 minus line 37)	0.1 %
39. Total chargeable adjustment (line 34 plus line 38)	4.6 %
40. Exceptions, as shown in item 6, Part I, if any, claimed as offsets to the adjustment shown on line 39. (Express as a percent of the base compensation rate shown on line 27, Part IV, A)	-0- %

Certification

I (we), have reviewed the information contained in this application and certify that this application is provided in good faith, that the data submitted herewith are factually correct, are in accordance with applicable regulations and the policies of the Economic Stabilization Act of 1970, as amended, and that (unless jointly certified) a true copy of this application has been served on the agent, if any, of the employees covered in this unit.

For Employer	Type name and title	
	Signature	Date
For Labor Organization For Collective Bargaining Adjustments	Type name and title	
	Signature	Date

Short Form **PB-3A**
October 1972
Pay Board
Washington, D.C.

OPTIONAL SHORT FORM APPLICATION FOR GENERAL WAGE, SALARY AND BENEFIT ADJUSTMENTS IN APPROPRIATE EMPLOYEE UNITS OF LESS THAN 1,000

Not to be used for adjustments in executive or variable compensation plans as defined by Pay Board Regulations.

OMB 167R/0003
Approval expires: 4/30/73

Items 1 and 2 are not to be completed by Applicant.	1. IRS Control Number	2. PB Case Number

PART I. — General Information

3. Number of employees in unit affected by this application (during pay period reported at items 16-18) 40

4. Type and location of employees (e.g., salaried employees in Rye, N.Y. plant).
Hourly Paid Equipment Adjusters

5. Principal product, activity or service of employer operation.
Special Machine Assembly

6. a. Control Year: From Nov. 14, 1971
To Nov. 13, 1972

b. Were these dates selected by exercising an option, under Pay Board regulations, to set your first control year?
(a) Yes ☐ (b) No ☒
(If yes, describe the basis for the dates in an attachment.)

7. Type of adjustment:
a. ☐ Deferred increase under contract or pay practice existing on or before November 13, 1971.
b. ☒ Other wage or benefit adjustment.

8. In the adjustment being reported, will there be a practice of or a contractual agreement to automatically adjust wage rates for changes in the cost of living?
a. Yes ☐ b. No ☒
(If yes, describe the timing and method of adjustment in an attachment.)

9. Have any wage, salary, or benefit adjustments — other than those reported on this form — been made during the control year described at item 6? a. Yes ☐ b. No ☒
(If yes, describe the adjustments and their amount in an attachment.)

10. During the last 12 months, has a PB form covering any of the employees covered by this application been filed with the Internal Revenue Service or the Pay Board?
a. Yes ☐ b. No ☒
c. IRS control number from previous case
d. Pay Board case number from previous case
e. Is this submission intended to be a substitute for one previously filed?
(a) ☐ Yes (If yes, give reasons in an attachment.)
(b) ☒ No

11. Is this form being filed for exception to the General Wage and Salary Standard?
a. ☐ Yes b. ☒ No
(If yes, complete item 12.)

12. Specific exception(s) requested (state exception here, enter percentage claimed on line 30 and describe exception(s), showing detailed calculations, if applicable, supporting the percentage claimed, in an attachment).
NONE

13. **Employer or Association making this Application**
a. Legal and trade name (if any): Special Machine Co., Inc.
b. Employer identification number (IRS): 123-456789
c. Address (number, street, city or town, State and ZIP Code): 123 First Avenue, Etcetera, MD 20760
d. Individual in company or association to be contacted for further information: J. P. Special
e. Telephone (area code and number): 301-123-4567

14. If the employer or association described above is a part of or subsidiary to another employing unit that has a name (legal or trade) different than shown above, complete the following, otherwise, skip to item 15.

Parent Company
a. Name: NONE
b. Employer identification number (IRS)

15. If the wage, salary, or benefit adjustments described in this application are being made under the provisions of a collective bargaining agreement, complete the following; otherwise, skip to Part II.

Union
a. Name and affiliation
b. Address (number, street, city or town, State and ZIP Code)
c. Individual in union to be contacted for further information
d. Telephone (area code and number)
e. Date contract was signed
f. Duration of contract: From: To:

CERTIFICATION: I (we) have reviewed the information contained in this application and certify that the data submitted herewith are factually correct, and in accordance with applicable Pay Board Regulations, and that (unless jointly certified) a true copy of this application has been served on the agent, if any, of the employees covered in this unit.

FOR EMPLOYER	Type name and title Signature	Date
FOR LABOR ORGANIZATION FOR COLLECTIVE BARGAINING ADJUSTMENTS	Type name and title Signature	Date

PART II. -- Computation of Base

16. Total payroll expenditures at straight-time rates, or at average straight-time piece rate earnings, during the most recent pay period available prior to the control year. (Include straight-time pay for overtime, weekend and holiday work and all paid leave hours, but exclude any premiums or differentials above the straight-time day shift hourly rates for such time. Also exclude all payments to workers, funds, or other carriers, for nonproduction bonuses, severance or supplemental unemployment benefits, pay-as-you-go pension plans, life insurance, savings and thrift plans, other health, welfare, pension or deferred profit-sharing plans; and all legally required expenditures (e.g., for social security, unemployment insurance, and workmen's compensation).

If the base payroll period for which data are requested is not a representative one, for seasonality or other reasons, provide data for a representative period and explain in an attachment why data for the most recent period were not reported ... $ 8,000.00

17. Total man-hours paid for (including all paid leave) during this payroll period. Include actual, not boosted, overtime and other hours equivalent to the straight-time payments noted on line 16. (In the absence of fixed hours for salaried or other employees, make reasonable estimates of hours paid for during the payroll period and explain the basis for the estimate in an attachment.) ... 1,600.00 (hrs.)

18. Pay period used From November 7, 1971 To November 13, 1972

19. Average straight-time hourly rate (line 16 divided by line 17) ... $ 5.00

20. Benefit factor ... 1.07

21. Base compensation rate (line 19 multiplied by line 20) ... $ 5.35

PART III. — Control Year Adjustments

22. List the amounts of all straight-time hourly rate adjustments (including skill and inequity adjustments) in cents per man-hours that are scheduled to be implemented during the control year described at item 6.

Pay adjustments, being made for employees under an employment contract or practice, based on, or that includes a merit component (including discretionary changes affecting individual employees on a variable timing basis and changes under plans instituted prior to November 14, 1971, that do not qualify for treatment as an exception under Pay Board Regulations) are to be reported as follows: (1) Estimate what the average straight-time hourly rate will be during the pay period ending on or immediately preceding the last day of the control year. (2) Subtract the average straight-time hourly rate in the base period from that estimate. (3) Enter the remainder on line (a). Certain merit adjustments may qualify for treatment as an exception under Pay Board Regulations. If you claim such treatment so indicate in item 11, Part I and provide details in an attachment.

Make all other adjustment calculations, assuming that there will be no change in the composition of the unit between the base date and the end of the control year or in the composition or structure of hours in the base and control years and enter the amount of the adjustment(s) on lines (b)-(d) and show corresponding effective dates.

Pay adjustments made under the provisions of merit plans or practices entered into since November 13, 1971, are to be reported as a general wage and salary adjustment.

If changes are being made in piece rates, enter the increase in hourly earnings, if any, that the average worker will receive during the average hour (assuming no change in worker output). Where control year adjustments vary among employees, indicate overall average increase in cents per hour prorated over all employees in the unit on the basis of man hours paid for during the base payroll period.

Merit plan adjustments (not including adjustments under plans adopted after November 13, 1971) (a) $

General wage and other adjustments. Effective date January 1, 1972 (b) $ 0.25

(c) $

(d) $

23. Wage adjustment in control year (sum of all entries at item 22a-d) ... $ 0.25

In completing items 24 and 25 count as included benefits those enumerated at Part III item 22 of the regular (long form) PB-3 and as qualified benefits those enumerated at Part III item 23 of the regular (long form) PB-3. Cost the benefits as if those that will be in existence at the end of the control year had been implemented at the beginning of the year. If the cost of the benefits is associated with wages or salaries, cost them on the basis of the wage or salary rates that will be in existence at the end of the control year. Base year hours worked, are all hours paid for during the base year minus paid leave hours.

24. Cost of new or improved included benefits per base year hour worked ... $ .00

25. Cost of new or improved qualified benefits per base year hour worked ... $ .023

PART IV. — Adjustments as a Percent of Base Compensation

26. Wage adjustment (item 23 divided by item 21) ... 4.7 %

27. Included benefit adjustment (item 24 divided by item 21) ... %

28. Qualified benefit adjustment (item 25) divided by the product of the average straight-time hourly rate (from line 19) multiplied by 1.19 = ____%, less qualified benefit standard (see instruction at Part IV item E 37a of the regular (long form) PB-3) of ____ % (If you claim eligibility for more than 0.7% provide documentation of your claim with appropriate satistics in an attachment) ... .0 %

29. Total chargeable adjustment (sum of lines 26, 27, and 28) ... 4.7 %

30. Exceptions, as shown in item 12 Part I, if any, claimed as offsets to the adjustment shown on line 29 (Express as a percent of Base Compensation Rate shown on line 21, Part II) ... %

Chapter IV

PHASE III REGULATIONS

4.1 § 130.1 SCOPE

4.11 § 130.1(a)

This part supersedes the provisions of the Pay Board Regulations and Price Commission Regulations except with respect to the food industry, the health industry, and the construction industry. However, the provisions of the Price & Pay Regulations serve as a guide in applying the general standards set forth in this part.

4.12 § 130.1(b)

Any report required to be filed with the Pay Board or the Price Commission under the provisions of Chapter II or III or any rule, order or regulation of the Cost of Living Council in effect on January 10, 1973 which was not filed by that date, shall be filed with the Council in the form and within the time in which it would have been filed with the Pay Board or the Price Commission.

4.13 § 130.1(c)

Renegotiation provisions in price, rent, wage, or salary contracts which depend for their operation upon the modification or termination of the Economic Stabilization Program are declared inoperative as unreasonably inconsistent with the goals of the Program. This part shall not operate to permit:

1. A retroactive increase in prices, rents, wages or salaries for goods or services sold or leased or work performed while the prices, rents, wages, or salaries were subject to the rules of the Price Commission or the Pay Board, or

2. A prospective increase in prices, rents, wages, or salaries under the terms of a contract subject to a Price Commission or Pay Board decision and order, except to the extent consistent with such decision and order.

First - This section operates to halt reopeners which were tied to modifications or terminations of the Economic Stabilization Program.

In this regard when conducting a compliance check look closely at any reopener language and determine whether it was tied to stabilization and if so whether increases were paid under it.

Note that where no reopener exists, this section does not operate to stop the parties of their own accord from reopening their contract and granting further increases.

At the inception of reading this section one must understand that CLC has interpreted contract to include "pay practices" as well.

Second - § 130.1(c)(i) clearly indicates that retroactive wage increases for services performed up to January 11, 1972, are not allowed BUT CLC has interpreted this to mean increase above the 5.5% standard or applicable exception. See § 130.15.

i.e. Employer and union with second control year beginning December 1, 1972, finally complete negotiations in February 1973, 5.5% could be paid from December 1, thru January 10 - then Phase III standard applies. Suppose the increase negotiated was 10% - retroactively is subject to CLC procedures outlined in § 130.15.

Third - § 130.1(c)(ii) is of paramount importance to the compliance effort in that it establishes the binding effect of Pay Board Decisions and Orders. This means that during the term of the D & O it cannot be violated.

4.14 § 130.1(d): DECISIONS AND ORDERS OF THE PAY BOARD

Under the rules in effect during Phase II, decisions and orders were issued by the Pay Board with respect to executive and variable compensation plans, practices, and programs. Many decisions and orders did not provide for expiration dates and others required only that certain payments, awards, or grants be charged as wages and salaries when such payments, awards, or grants were made. Under Phase II rules, the payments, awards, or grants which were charged as wages and salaries were applied against the standard in the control year in which they were paid (except in the case of deferred payments). With the progression to the self-administered controls of Phase II, it now becomes necessary to clarify the status of, set expiration dates for, and provide treatment, for payments, awards, or grants made during Phase III, that were subject to decisions and orders issued under the rules in Phase II.

Accordingly, a new paragraph (d) has been added to § 130.1 to provide specifically that decisions and orders issued by the Pay Board shall be effective only for payments, awards, or grants made with respect to plan, practice or fiscal years (as appropriate), beginning prior to January 11, 1973. Furthermore, new § 130.1(d) provides that such payments, awards, or grants made during Phase III which are required by decision and order of the Pay Board to be charged as wage and salary increases, should be added to other wage and salary increases, and that the total of such increases is subject to the general wage and salary standard provided in § 130.12.

Although § 130.12 (general standard) will apply in many situations where payments, awards, or grants are made during Phase III, that section may not be applicable if another Pay Board decision and order limits wage and salary increases which applies to a control year which ends after January 10, 1973. In that situation, new § 130.1(d) requires that if they are to be charged as wages and salaries the total of wage and salary increases to be paid must be consistent with such other decision and order, in accordance with § 130.1(c)(ii). This is known as the "Double D & O situation." Also, § 130.12 will not apply to pay adjustments affecting employees in the food, health services and construction industries since these are under mandatory controls. For such industries the payments, awards, or salary increases, therefore, remain subject to the rules and regulations applicable to those industries.

Where a decision and order with respect to executive and variable compensation does not provide that excess grants are to be charged as wages and salaries (as in cases involving stock options issued at 100 percent of fair market value), the grants made must be consistent with the limitations of the decision and order (i.e., subject to an aggregate share limitation).

4.15 § 130.6: THE "SPRING" REGULATION

This section was published May 30, 1973. The purpose of the regulation is to prevent the so-called "spring effect" on wages and salaries because of the removal of mandatory controls. The regulation provides that if a wage increase for a job or appropriate employee unit was reduced because of the operation of the general standard, or an action of the Pay Board or IRS, the removal of controls cannot result in the wage rates "springing" to the levels that would be in effect under the contract or pay practice if there had been no controls. Instead each subsequent increase for the duration of the contract or pay practice must reflect the reduction that occurred during Phase II.

Example: Unit A's BCR during Phase II was $4.00/hour. Unit A's contract, effective July 1, 1972 called for an increase of .50/hour or 12.5%. A second increase of .50/hour was called for on July 1, 1973. Unit A was held by IRS to a 5.5% increase during Phase II, or .22/hour. Therefore, on June 30, 1973, Unit A's BCR is $4.22/hour. Unit A may not now restore the .28/hour, and add to it the .50 called for on July 1. Unit A may, subject to challenge, implement the .50/hour increase bringing its average to 4.72/hour, (rather than the $5.00/hour rate that is prescribed in the contract). § 130.6(b) permits Unit A to apply to COLC for the remainder, and to pay it if COLC takes no action within 60 days.

The regulation takes into account the fact that many units implemented their full contract rate immediately upon the announcement of Phase III. Such action is not a violation; however, the increase must be reported to COLC within 30 days after May 30, 1973.

4.2 SUBPART B - GOALS AND GENERAL STANDARD

4.21 § 130.10 Goals

The goals of the Economic Stabilization Program are to reduce the rate of inflation further in 1973 and to establish general confidence in reasonable stability of prices beyond 1973. The Economic Stabilization Program is designed to encourage private behavior that is consistent with those goals.

4.22 § 130.11 Standards

This subpart establishes standards for private behavior which are intended to be applied voluntarily and on a self-administered basis. The standards do not apply to pay adjustments affecting employees of firms in the food industry, the health services industry, or the construction industry.

4.23 § 130.12 General Wage and Salary Standard

The general wage and salary standard is a 5.5 percent increase per annum. The standard shall apply to any pay adjustment payable with respect to an appropriate employee unit after January 10, 1973. Adjustments in excess of the standard may be made only as necessary to reflect qualified fringe benefits or to prevent gross inequities, serious market disruptions, or localized shortages of labor. The policies and principles, including the computation methods, contained in the Pay Board's regulations in effect on January 10,1973, can be used in applying the standard. No wage or salary increase should be placed into effect which is unreasonably inconsistent with the standard or the goals of the Economic Stabilization Program.

Comment: Note that as we later speak we are only concerned here with industries subject to voluntary compliance.

Under § 130.12: The standard is 5.5%, but as you may have noted, CLC tends not to emphasize the 5.5% figure but uses such terms as are found in the last sentence of § 130.12.

1. Many people have been confused by the language in § 130.12 with respect to "qualified benefits". This language is not intended to change the Pay Board qualified benefits standard for computational purposes (see later § 130.110 qualified benefits are still in the base compensation rate despite arguments to the contrary).

2. Many people have attempted to get CLC to make their decision for them as to what is allowable under § 130.12 (i.e., how far can I go over 5.5% or a self executed exception without risking challenge). The intent of the Phase III program is to encourage people to make these decisions themselves--neither CLC nor IRS is to become a crutch. Therefore, advisory opinions are not issued. People who self execute would be well advised to document of their own files the reasons for believing they are entitled to an exception.

3. Note Pay Board regulations can be used in applying the standard.

4. Obvious problems arise where an employer had a contract in effect prior to January 11, 1973, calling for say 10 or 15% increases during 1973. The employer may think such increase excessive in view of the stabilization effort. The Union, however, may want to enforce the contract. Note: The Council does not agree that all pre-Phase III contracts will inevitably be paid under the voluntary compliance rules. Parties are expected to apply 130.12. The employer says that under old Pay Board regulations (§ 201.35) he could have challenged the increase as a Party at Interest. There are no Party at Interest challenges in the voluntary sector, though an employer, of course, can write CLC and notify CLC of the size of the pending increase--no action is promised.

4.24 § 130.14 Executive and Variable Compensation for Industries Under Voluntary Controls

During Phase II, certain payments, awards, or grants under existing executive and variable compensation plans, practices, or programs were permitted to be made under Pay Board rules without being charged as wages and salaries. The same was true for replacement modified or revised plan practices or programs. A new 130.14 states the Phase III policies for all the above plans, practices or programs.

Appendix B of Part 130 (as appropriate) in determining whether payments, awards, or grants are charged as wage and salary increases. Under new § 130.14, these "excesses" should be added to other wage and salary increases paid in the appropriate employee unit and the total considered against the general standard of § 130.12.

1. *Certain stock option plans*. Section 130.14 provides that stock option grants during Phase III under plans which meet the four requirements of 201.76(b)(1) should not exceed the applicable aggregate share limitation except to the extent necessary to prevent cross inequities, serious market disruptions, or localized shortages of labor.

2. *Replacement, modified, and new plans, practices, or programs*. Under Phase III rules, certain plans, practices, or programs were required to be submitted to the Pay Board for prior approval. This generally was the case when an employer replaced, modified, or revised a plan, practice or program or adopted a new one in which the amount of compensation exceeds that of the old plan, practice or program.

In considering submissions for prior approval, the Pay Board applied certain principles, policies, and conditions not set forth in Pay Board regulations. A new Appendix B has been added to part 130 to provide guidance to employers in the above situations.

In the food, health, and construction industries the rules and regulations prescribed during Phase II continue to apply and requests for prior approval, as appropriate, should now be submitted to the COLC.

(a) *Incentive compensations plans or practices*. During Phase III an employer may replace, modify, or revise an incentive compensation plan or practice in effect on November 13, 1971, as defined in § 201.74 and 201.75 of Pay Board regulations, without prior approval. However, any payment made under such plan or practice in excess of the allowable amount or in excess of the payments which would have been made under the prior plan or practice should be treated as an increase in wages and salaries and apportioned to the appropriate employee units of participants.

Where a new incentive compensation plan or practice is adopted payments with respect to the first plan year of operation (the consecutive 12-month period starting with the effective date of the plan) should be treated as an increase in wages and salaries, and apportioned to the AEU of the participants.

(b) *Certain rules for certain types of incentive compensation plans*. The special rules in new Appendix B describe the valuation which should be used for awards under new performance share plans and phantom stock plans adopted in Phase III to determine the increase in wages and salaries for participants.

(c) *Stock option plans*. An employer may replace or modify or revise an existing stock option plan which meets the requirements of § 201.76(b)(1)(i) (a)-(d) of Pay Board regulations after January 10, 1973, without prior approval. However, the aggregate share limitation which was applicable for the prior existing plan under Pay Board regulations should continue to be the aggregate share limitation for such replacement, modified, or revised plan. If a new stock option plan (i.e., one which is not a replacement, modification, or revision of an existing plan, and one which meets the requirements of § 201.76(b)(1)(i) (a) through (d) of Pay Board regulations), is adopted after January 10, 1973, the aggregate share limitation for the fiscal year in which such plan operates is 25 percent of the number of shares authorized for stock option grants under the plan.

(d) *Sales or commission plans or practices and certain production incentive programs*. Sales or commission plans or practices and certain production incentive programs, as defined in § 201.77 of Pay Board regulations, which are applicable to employees not subject to a collective bargaining agreement and which were in effect on November 13, 1971, may operate under their terms without being treated as an increase in wages and salaries as long as such plans are not replaced, modified, or revised.

Payments made under a revised, modified, or replacement sales or commission plan or practice or production incentive program adopted in Phase III, which result in an increase in compensation over that which would have been payable under the prior existing plan when measured against the level of sales or production volume at the time of determining payments under such prior plan, should be treated as an increase in wages and salaries for participants. Payments under a new sales or commission plan or practice or production incentive program is also treated as an increase in wages and salaries to participants covered by such plan, etc.

Payments treated as an increase in wages and salaries under these guidelines should be included in the base compensation rate of the appropriate employee unit for purposes of measuring wage and salary increases for subsequent control years.

3. § 130.15 Retroactive pay adjustments for work performed on or before Jan. 10, 1973. This section was designed primarily with "Phase 2½" cases in mind - that is, contracts agreed to after January 10, 1973 which are retroactive to a date prior to January 10. Under § 130.15 such payments may be made by employers in the voluntary sector if they do not exceed the standard, or if they meet the criteria for a self-executing exception and do not exceed the statutory percentage limitations.

Payment may also be made pursuant to other exceptions, including section 201.30, but such payments must be reported to COLC, which may order them repaid if it is not satisfied that the increase was justified.

Note: This section does not apply to firms in the mandatory sector, nor does it apply if there was an exception request filed prior to January 10, or if there is a Pay Board D & O covering the period for which retroactivity is sought.

4.3 REPORTING AND RECORDKEEPING FOR VOLUNTARY COMPLIANCE

Section 130.23 and 130.24 provide, respectively, that pay adjustments which affect 5000 or more employees must be reported to the Council and those affecting under 1000 are subject to recordkeeping. All reporting is to be made to the COLC.

These sections are self explanatory with the following exceptions:

1. Even though the section does not specifically mention the "appropriate employee unit" concept, such concept should be used when determining whether a pay adjustment applies to or affects 1,000 or more or 5,000 or more employees.

2. Until new forms are devised or further regulations are issued the appropriate forms to use for reporting and recordkeeping are the PB-3 and PB-3A forms.

4.4 MANDATORY CONTROLS

The Phase II rules remain mandatory for the Construction and Health Services Industries and mandatory for the Food Industry until March 29, 1973. (Subparts F, G, and H)

4.41 Construction Industry

In the Construction Industry there are no special new developments except that CISC and COLC have continued mandatory coverage for certain otherwise nonconstruction operations. Section 130.72 (b) provides that in addition to those pay adjustments already determined to affect employees in construction, the following are also to be considered construction operations.

1. Pay adjustments under the terms of a construction industry collective bargaining agreement which covers both construction and nonconstruction operations; and

2. Pay adjustments under the terms of a nonconstruction collective bargaining agreement which --

(a) Continues a close historical relationship which has been established to a construction industry collective bargaining agreement; and covers delivery of materials to a construction site and/or onsite application of materials under circumstances in which a dispute involving such nonconstruction agreement would cause onsite construction operations to be more than marginally interrupted.

4.42 § 130.60 Health Services

During Phase II there wasn't any need to define health service providers with respect to wages. The Price Commission did, however, establish special rules for health service providers. Until changed it is COLC position that only employees of Health Services Providers as defined in Appendix I to Part 300 of Price Commission Regulations are subject to Phase II wage controls.

Appendix I - Institutional and Noninstitutional Providers of Health Services

Pursuant to § 300.18 and 300.19, this Appendix lists examples of the institutional and noninstitutional providers of health services subject to those sections. The lists are not intended to be exhaustive.

Institutional providers include hospitals, nursing homes and other inpatient health care facilities. The noninstitutional providers include physicians, dentists and nurses. It would serve no purpose to restate here the entire list, however, in any case where a question arises it should be consulted. Although not "exhaustive," it is exhausting.

4.43 § 130.58 The Food Industry

The Food Industry was controlled under Pay Board regulations until March 29, 1973, when a whole new ball game was instituted with respect to reporting and prenotification. The Pay Board computation rules, however, still are used. For the purposes of this section of the course we will only attempt to tell you whether the employees are food or not food.

1. If the employer does not receive 20% of his revenue or 50 million dollars of his revenue from the SALES of food his employees are not covered (§ 130.51). Food is defined in § 130.110 as follows:

> "Food" means items produced or manufactured for human ingestion except alcoholic beverages, tobacco products, or drugs. An item is not food within the meaning of this definition until it enters into a processing stage where it is intended for use as or in a product for human ingestion.

2. If the employer is exempt from price controls because of Subpart D his employees are not covered (combination of § 130.58(b) and § 130.51). Subpart D you will note exempts most raw agricultural goods.

But the mere fact that some of an employer's prices are exempt under Subpart D does not exempt his employees if sales from his nonexempt food products meet the 20% or 50 million dollar test, i.e., vertical intergration of Green Giant foods where it processes as well as grows. (one corporation)

3. If the employer is not exempt under (a) or (b) then his employees are potentially controlled. To determine whether given employees are controlled one must look at the composition of the appropriate employee unit. If 50% or more of the employees in the unit are engaged in "food operations" the entire unit's wages are controlled. If 60 or more employees in the unit are engaged in food operations, then those particular employees are controlled.

(a) § 130.110 defines food operations as follows:

> "Food operations" means the growing, harvesting, manufacturing, production, raising, packaging, storage, distribution, transportation, or sale of food or the rendering of administrative or support functions for such activities.

(b) Note that there are no small business exemptions any more. Restaurant employees are controlled.

4.5 PHASE-IN REGULATIONS FOR PRENOTIFICATION

On April 20, 1973 the prenotification requirements were modified (38FR 9825).

Under the new regulations the prenotification of all wage and salary increases in the food industry will generally not be required until August 1, although prior approval for amounts in excess of the general wage guideline (and self-executing exceptions) will continue to be required.

Increases under new contracts or pay practices agreed to on or after August 1, 1973 must be prenotified to the Cost of Living Council and receive prior approval before they may be implemented regardless of the size of the increase.

Wage and salary adjustments agreed to between March 29 and August 1, 1973 may be put into effect prior to August 1 if they do not exceed the wage guideline (and self-executing exceptions) although such actions must be reported to the Cost of Living Council within 10 days of the scheduled increase.

Pay adjustments scheduled to be put into effect prior to August 1, 1973 under terms of agreements reached between November 13, 1971 and March 29, 1973 may be implemented without prenotification if they do not exceed the guidelines and exceptions for the entire contract year although they must also be reported within ten days.

Increases under agreements which date back prior to November 14, 1971, as in Phase II, may be put into effect under their original terms without prenotification prior to August 1, 1973, although they must be reported and will be subject to challenge.

Generally, after August 1, 1973, pay increases, regardless of amount, will require prior approval form the Cost of Living Council before they may be put into effect.

Chapter 5

SOME CHANGES IN RECODIFICATION OF INITIAL PAY REGULATIONS WORTH SPECIAL NOTE

5.1 NEW JOBS, JOB CLASSIFICATIONS OR POSITIONS

5.11 General

Section 201.62 provides rules for the determination of pay rates for newly created jobs in two situations:

1. pay rates for newly created jobs within an existing appropriate employee unit; and

2. pay rates in a newly created appropriate employee unit consisting entirely of new jobs.

This section does not apply to the hiring of new employees to fill existing jobs, the reclassification of existing jobs within an appropriate employee unit, or the determination of pay rates in a newly created appropriate employee unit which contains new and existing jobs.

The initial rate for a new job is determined with reference to comparable jobs; this comparison must include the following factors:

1. duties, responsibilities and skill requirements;

2. length of service or experience in similar jobs;

3. hours of work; and

4. method of compensation (e.g., commission, piece rate, salary, hourly rate, and amount of benefits provided, and longevity or automatic progression schedules).

According to the regulation, the jobs or positions used for this comparison must be selected in the following order:

1. comparable jobs in the same employee unit;

2. comparable jobs in the same firm;

3. comparable jobs in the same local labor market area; or

4. comparable jobs in other firms in the industry.

If comparable jobs exist within the same employee unit, the comparison must be based on such jobs; in the absence of comparable jobs in the same employee unit (or if it is a new appropriate employee Unit), a comparison must be made with comparable jobs in the same firm (if any). If comparable jobs do not exist in the same employee unit or same firm, a comparison must be made with comparable jobs in the same labor market area (if any), etc. (NOTE: Just prior to the end of Phase II, the Pay Board decided to permit reference to the appropriate comparability source, even if not in the order specified under the regulation. This modification is considered to be in effect.

5.12 Existing Units

The comparison of jobs with similar duties and responsibilities determines the "initial rate" for the new job. Employees hired in the new job or position may be paid at the initial rate established in this manner without charge to the existing unit's maximum permissible annual aggregate increase.

However, a pay rate established for a new job which exceeds the "initial rate" determined by the job comparison is a chargeable control year adjustment to the extent that the established pay rate exceeds the "initial rate."

Example: Firm J employs members of appropriate employee Unit L. During L's third control year, J established a new job within L. After completing a job comparison with similar jobs in Unit L, J determined that the initial rate for the new job is $4.00 per hour for a 40 hour week. However, J decides to establish the pay rate for the new job at $4.50 and hires five employees at the $4.50 rate. The $.50 per hour for the five new employees is a chargeable increase for Unit L.

The initial rate ($4.00 in the above example) is not included in the base compensation rate of the appropriate employee unit for the control year in which the job was created.

5.13 New Appropriate Employee Units

The pay rate for a new appropriate employee unit consisting entirely of new jobs may not exceed the "initial" rate determined by the job comparison method described above during the new employee unit's first control year. The first control year of a new appropriate employee unit is a period of 12 months or less ending on November 13, succeeding its formation.

Example: A new appropriate employee unit consisting entirely of new jobs was established on January 1, 1972. The first control year for the new unit is January 1, 1972 to November 13, 1972; the second control year is November 14, 1972 to November 13, 1973.

If a pay rate established for a new job in a new appropriate employee unit (consisting entirely of new jobs) is less than "initial rate" determined by the job comparison, the pay rate for the new job may be increased to (but not in excess of) the "initial rate" during the first control year.

Example: The "initial rate" for a new job (B) determined by a job comparison study is $4.00 per hour. The pay rate for job B is set at $3.75 per hour when the appropriate employee unit is established. The rate for job B may be increased to $4.00 per hour during the first control year of the new unit.

The only increases which may be paid in excess of the "initial rate" during the first control year of a new appropriate employee unit consisting entirely of new jobs are increases excluded under Section 201.60. However, a new appropriate employee unit will not meet the requirements of §201.60(b) or (c) since the unit was not covered by a longevity or automatic progression plan in existence on November 13, 1971.

5.2 SPECIAL COMPUTATIONAL RULES §201.64(a) and (b)

5.21 Cost of Living Allowance

This computational rule is a modification of the "sum of the percentages" computation method. Cost of living increases pursuant to a "generally accepted escalator formula" may be time-weighted. (See §201.64(a).

A "generally accepted escalator formula" is determined with reference to prior contracts or pay practices of the employee unit, or to escalator formulas covering comparable employee units in the same industry. A widely used escalator formula provides for a 1¢ an hour increase in wages for each 0.4 increase in the consumer price index; payments are made annually, semi-annually, or on occasion, every calendar quarter. Stipulations are often included in escalator formulas for maximum and minimum payments. See Pay Board Ruling 1973-1.

Computation -- The special computational rule permits a cost-of-living adjustment to be time-weighted by the number of months it is in effect during the control year. The computational method can be illustrated as follows:

$$\left(\begin{array}{l}\text{COLA}\\ \text{Increase}\end{array}\right) \times \frac{\text{Number of months in effect}}{\text{Number of months in control year}}$$

The following table illustrates the method to be used in computing increases pursuant to this exception:

Calendar year = control year	Date/Effect	¢/hr.	% Increase	Cumulative Total
Base compensation rate		$5/hr.		
General increase	1-1-72	20¢/hr.	.04	
COLA	1-1-72	1¢/hr. $\times\frac{12}{12}$ = 1¢/hr.	.002	.042
COLA	4-1-72	2¢/hr. $\times\frac{9}{12}$ = 1.5¢/hr.	.003	.045
COLA	7-1-72	8¢/hr. $\times\frac{6}{12}$ = 4¢/hr.	.008	.053
COLA	10-1-72	4¢/hr. $\times\frac{3}{12}$ = 1¢/hr.	.002	.055

In the above illustration, the time-weighting of the cost-of-living increase yields a total increase for the control year of 5.5%. Without time-weighting, the total increase would have been $.35 an hour or 7% on a base of $5.00.

The cost-of-living increases computed pursuant to this special rule are included with other control year adjustments in the average straight-time hourly rate. This special rule is not an exception to the 5.5% standard. In the above illustration, the general increase and the two cost-of-living increases (time-weighted) cumulated to 4.5 percent as of 4-1-72. If on 6-1-72 a general 1.0% increase were scheduled to go into effect, the cumulative total of increases during the control year would be 5.5 percent as of that date; therefore, no further increases may be given without an exception.

5.22 Reduction in Hours

A reduction in the scheduled hours worked per week, day, or other unit of time without a proportionate decrease in pay is a chargeable adjustment in the base compensation rate for the control year. (See Section 201.64(b).

5.221 a. General Rule -- The base compensation rate is an hourly rate determined by dividing the total cost of wage and salaries by the total man-hours paid (for straight-time payroll expenditures) and total man-hours worked (for included and qualified benefit costs). Any decrease in the denominator (man-hours worked or paid for) attributable to a reduction in scheduled hours worked will result in an increase in the hourly base compensation rate. This adjustment affects the base compensation rate (direct effect) and the control year adjustments which are calculated on the basis of hours worked or paid for during the base year (secondary effect).

The direct effect of a reduction in hours is a percentage increase in the base compensation rate which is determined as follows:

$$\frac{\left(\begin{array}{c}\text{scheduled hours worked in base}\\ \text{period}\end{array}\right) - \left(\begin{array}{c}\text{proposed schedule of}\\ \text{hours worked}\end{array}\right)}{\text{proposed schedule of hours worked}} \times 100 = \%$$

Example 1: The scheduled hours worked in the base period for Unit V was 40 hours per week; during the control year, the employer of Unit V plans to reduce the scheduled number of hours worked per week from 40 to 35 hours. The direct effect of reduction in hours is 14.3% $\underline{/}(40-35) \div 35 = .143$; $.143 \times 100 = 14.3\%\underline{/}$.

The secondary effect of a reduction in hours is a percentage increase which reflects the impact of the reduction in hours on control year adjustments. For example, the control year cost of qualified benefits is illustrated as follows:

$$\frac{\text{Total cost of qualified benefits control year}}{\text{Total man-hours worked in base year}}$$

A reduction in hours worked, by decreasing the denominator, will underestimate the actual hourly adjustment in the qualified benefit rate. The secondary effect of a reduction in hours is determined as follows:

(direct effect of reduction in hours) (%) x total control year = % adjustments (%)

Example 2: Assume the same facts as Example 1. During the control year, Unit V receives a total control year adjustment (Part IV, line 36 on Form PB-3) of 8%. The secondary effect of the reduction in hours would be 1.1% /(direct effect) .143 x .08 (control year adjustment) = .011; .011 x 100 = 1.1%/.

The total chargeable increase in the base compensation rate attributable to a reduction in hours is the sum of the direct and secondary effects. In the above examples, the total increase would be 15.4% (14.3 x 1.1).

The 15.4% reduction in hours increase is added to other control year adjustments to determine the total control year increases; in the above examples, the total control year increase would be 23.4% less the available qualified benefits standard (15.4% + 8%).

5.222 Alternative Method -- The special rule calculates increases in the base compensation caused by a decrease in the denominator of the base compensation rate formula on the assumption that the numerators (total cost of qualified and included benefits and total straight-time payroll expenditures) are constant.

Where the numerators of the base compensation rate formula are affected by the reduction in hours, alternative methods of calculation may be used.

The numerators will be affected by any reduction in straight-time pay. If the reduction in hours is accompanied by a decrease in the average straight-time hourly rate, the amount of decrease, (expressed as a percentage of the base compensation rate) including any "negative" secondary effect on included and qualified benefits, may be used to offset the percentage increase attributable to the reduction in hours computed pursuant to the general rule.

Example: Unit M reduces the scheduled work hours from 40 to 35 hours per week; Unit M receives no control year adjustments in the base compensation rate other than the reduction in hours. The total control year increase for Unit M is 14.3% (the secondary effect is zero, .143 x 0 = 0; see Example 1 in 3.421). The average straight-time hourly rate of Unit M is $5.00 during the base payroll period. The base compensation rate of Unit M is $6.50 per hour. The average weekly salary of Unit M was $200 during the base payroll period. Unit M wishes to reduce the weekly salary to $180 (or $4.50 per hour for 40 hours) to offset the cost of the reduction in hours. The percentage offset is $.50 per hour in the average straight-time hourly rate or 7.7% of the base compensation rate (.50 ÷ 6.50). In addition to the 7.7%, the decrease in the straight-time rate has a "negative" roll-up effect on included and qualified benefits. For example, the overtime premium at $5.00 per hour was $2.50, at $4.50, the overtime premium is $2.25 resulting in a negative roll-up of $.25 for each hour of overtime worked in the base year. The negative roll-up amount (expressed as a percentage of the base compensation rate) is added to the percentage decrease in straight-time pay to yield the total offset to the reduction in hours increase.

An alternative method may also be used where the numerators in the base compensation rate formula are increased, e.g. where the method for accural of paid leave is independent of the unit of time used for the reduction in hours.

5.3 LONGEVITY AND AUTOMATIC IN-GRADE PROGRESSION

Longevity and automatic in-grade progression are excluded from the computation of control year adjustments if the longevity or automatic progression increases were --

1. provided for in an employment contract in effect on November 13, 1971; or

2. provided for in a pay practice previously set forth on November 13, 1971.

The exclusion extends to increases in successor contracts or pay practices to the extent that the increases do not exceed the amount provided for in the existing contract or pay practice previously set forth.

This exclusion has been interpreted to apply to increases paid pursuant to longevity or automatic progression plans in existence on November 13, 1971, in addition to those plans contained in existing contracts and pay practices previously set forth. (See Appendix B, Item (1) 36 FR 21953, for historical basis.)

Longevity and automatic progression increases must be solely related to the employee's length of service and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance. The only conditions which can attach to the increase are satisfactory performance and length of service. Further, the amount of the increase must be determined in advance and may not be subject to any discretionary adjustment. If an employer has any discretion as to the amount of the adjustment once the employee's performance has been judged to be satisfactory, the adjustment is a merit increase rather than a longevity increase. Even though length of service may determine when an employee is reviewed, if the amount of the increase is discretionary, then it is merit pay rather than longevity.

Example 1: An employer has a plan for making wage and salary increases which gives an employee a $100 increase each year for satisfactory performance, $125 increase for good performance, or $150 for excellent performance. Such a plan would entail an "affirmative exercise of employer discretion or subjective evaluation." The $100 increases for satisfactory performance will not be considered longevity but will be considered merit because of their inclusion in a plan which distinguishes the size of increase by how well an employee has performed.

Example 2: An employer has a plan for paying increases which gives each employee a $20 per week increase for satisfactory performance for each of his first three years of service; employees during the first three years of service receive no other increases except a cost-of-living or general increase; after three years of service under the plan employees may receive from $10 per week to a $40 per week increase resulting from an annual merit review. The $20 per week increases paid during the first three years of service of an employee will be considered longevity increases because they are separate and distinct with no affirmative exercise of discretion or subjective evaluation.

Paragraphs 201.60(b) and (c) provide that the exclusion may be continued for longevity and automatic in-grade progression increases in successor contracts and pay practices to the extent that the "successor" increases do not exceed the amount provided for in the contract or pay practice in existence on November 13, 1971.

The exclusion relates to the plan in existence on November 13, 1971 and not to the amount of money paid out in longevity or automatic progression increases during the base payroll period or base year. The plan in existence on November 13, 1971, may be continued in a successor contract or pay practice regardless of an increase in the absolute amount of dollars paid out during the control year.

Example: On November 13, 1971 Employer T paid employees of appropriate employee Unit C a $100 increase after ten years of service. During the base year, 5 employees reach their tenth anniversary with T and received the $100 longevity increase for a total cost to T of $500. During the control year, 7 employees will reach their tenth anniversary, costing T $700 for longevity increases. The additional $200 cost of longevity increases during the control year is excluded from the computation of control year adjustments because payment was made under the same plan which was in existence on November 13, 1971.

If the plan which was in existence on November 13, 1971, is modified after November 13, 1971, any increases in employer cost are chargeable adjustments for the control year. Some common modifications of longevity or automatic progression plans are:

1. an increase in the frequency of increases (e.g. change from 5¢ every 16 weeks to 5¢ every 10 weeks);

2. an increase in the size of increases (e.g., change from $100 annual increments to $150 annual increments);

3. a modification of eligibility requirements (e.g., change from 5 years in grade to 5 years with the firm); or

4. the addition of more longevity steps at the top of range (e.g.. change from annual increments for five years until job rate maximum to annual increments for five years plus one additional step at 10 years of service).

A longevity or automatic progression plan in existence on November 13, 1971, is not considered to be "modified" if the increased amounts paid under the plan are attributable to the secondary effect of general wage and salary increases.

Example 1: On November 13, 1971, a longevity plan provided for a 2 percent increase in weekly salary after 10 years of service. The average salary for employees with 10 years of service was $100 per week. The November 13, 1971, plan cost $2 per week per employee with 10 years of service. On March 1, 1972, salaries were increased across the board 5 percent, resulting in an average weekly salary of $105 for employees with 10 years of service. The November 13, 1971, plan now pays out 2 percent of $105 or $2.10. The additional $0.10 per week increase is not considered a modification of the plan in existence on November 13, 1971, the entire $2.10 may be excluded.

The computational rule set forth in Section 201.64(c) calculates the amount of a chargeable increase for the control year, if any, attributable to the modification of a longevity or automatic progression plan in existence on November 13, 1971. The chargeable adjustment is the amount of excess, if any, of

1. the projected total amount of increases granted pursuant to the modified plan during the control year, over

2. the projected amount that the November 13, 1971, plan would have generated for the control year had it been in existence.

All projections are made on the basis of the same workforce composition which existed during the base payroll period except that the distribution of employees by length of service will be "aged" by one year. This method does not reflect changes in skill levels or size of the unit but it does "melt" the "ice cube" for purposes of measuring changes in length of service.

Any changes in a longevity or automatic progression plan during a control year are assumed to be in effect for the entire control year.

Example 2: Employee Unit X contains 10 employees, two with 8 years of service, seven with 9 years of service and one with 10 years of service. On November 13, 1971, the employees were covered by a longevity plan which provided for a $500 per year increase after 10 years of service. On March 1, 1972, the longevity plan was changed to provide for a $750 per year increase after 10 years of service. The chargeable increase for the first control year would be $2,000 (i.e., 8 employees x $250 per employee). This amount would be reduced to an hourly rate and charged as an increase in average straight-time hourly rate for employee Unit X.

Example 3: Assume the same facts as in Example 2 but instead of increasing the longevity payment after 10 years of service, the employees would receive $500 per year after 9 years of service. The November 13, 1971, plan would cost $3,500 for the seven employees reaching their 10th anniversary. The modified plan would cost $3,500 plus $1,000 for the two employees reaching their ninth anniversary. The chargeable amount would be $1,000 ($4,500 - $3,500) reduced to an hourly rate for the employee unit during the control year.

If the amount of longevity or automatic progression increases paid under a modified plan is less than increases which would have been paid under the plan in existence on November 13, 1971, the amount saved may not be used to offset any chargeable control year adjustments unless otherwise provided by the Pay Board in a decision under Section 201.30.

All increases paid pursuant to longevity or automatic progression plans established after November 13, 1971, are chargeable adjustments for the control year.

CHAPTER VI

EXECUTIVE AND VARIABLE COMPENSATION

/Special Note

The rules set forth in Subpart F of the Pay Board Regulations apply to firms in the mandatory sector and serve as guidelines for firms in the voluntary sector during Phase III. Additional Phase III guidelines are contained in Appendix B to Part 130 of the Cost of Living Council's Regulations. Any references to required Pay Board approval contained in this text DO NOT apply to firms in the voluntary sector during Phase III. Such firms are governed by the guidelines contained in Appendix B. References to Pay Board approval with respect to firms in the mandatory sector should be understood to mean Cost of Living Council approval during Phase III.

6.1 INTRODUCTION

These regulations specifically deal with compensation such as bonuses and stock options normally received by executives, and with other forms of variable compensation such as sales, commission and production incentive payments. These regulations also provide special rules to govern situations where new plans, practices, or programs are adopted by existing or new employees. A separate set of rules is required because executive and other forms of variable compensation are typically highly individualistic in nature, tailor-made for an employer, an executive group, or even an individual executive. Additionally, the operating period for these plans is different from the usual weekly, bi-weekly, or monthly payroll period. For example, bonus plans typically provide for once-a-year payment and stock options are often granted even less frequently.

6.2 COVERAGE - §201.71

The regulations separate executive and variable compensation from other forms of compensation. The term "executive" is not defined. However, the determination of whether the rules regarding executive and variable compensation apply to an item of compensation does not depend on the individual receiving the compensation but on the type of compensation received. Thus, where an employee who is not an executive is granted a stock option under a stock option plan, executive and variable compensation rules would apply.

Where any provision of Pay Board regulations conflicts with a provision of the executive and variable compensation regulations, the executive and variable compensation regulations control to the complete exculsion of the other regulations.

These regulations do not affect any provisions of a collective bargaining agreement.

6.3 DEFINITION OF TERMS - §201.72

In section 201.72 "wages and salaries" is defined to mean the same as under §201.2 except that items constituting incentive compensation are not wages and salaries, unless otherwise treated as wages and salaries under the executive and variable compensation regulations. This means that unless specifically included in wages and salaries, an item is not includible as wages and salaries and would not count against the allowable wage and salary increase with respect to an appropriate employee unit for the control year paid or go into the base for purposes of computing the allowable wage and salary increase for the appropriate unit for the control year after the control year paid.

The term "executive compensation" is defined to include base salaries, job perquisites, and incentive compensation.

The term "base salary" means the cash remuneration paid to an employee on a regular periodic basis. This term includes present payments as well as deferrals, but does not include any payment in property other than cash.

The term "job perquisites" is defined to mean "any item paid to or furnished to or on behalf of an employee by an employer for the performance of services." The list of items which follows the definition is not exclusive. It is only designed to give examples of the types of items which are considered as job perquisites.

The term "incentive compensation" is also defined by examples. The list of examples includes any bonus (whether or not payable in cash). This type of bonus includes the bonus paid to the president of a large corporation based exclusively on an increase in sales, profits, or dividends, as well as a Christmas bonus paid to an employee who is not an executive.

Also, included are so-called phantom stock awards. A phantom stock award basically is an award of a fictional share of stock of the employer corporation. The employee under this type of plan is credited with a certain number of either or both dividend or share units. A dividend unit entitles the holder to receive the dividend declared with respect to an actual share of stock. The share unit entitles the holder to receive the appreciation with respect to an actual share of stock over the period of time between the grant of the unit and the time the holder elects to receive this appreciation. While no shares of stock are actually granted to the employee, he holds either or both the rights to any dividends and any appreciation as if he held the stock.

Performance share awards are included in the definition of incentive compensation. Under such type of incentive plan, an employee is granted a certain number of contingent performance share units, each equivalent to an award of a share of stock. However, the award is payable (either in stock of the employer or cash) at some time in the future only if certain performance goals under the plan are met. These goals are often in terms of increases in earnings per share with respect to the common stock of the employer over a period of time. If these goals are not met there may be no payment or there may only be partial payment.

Employer contributions to stock purchase plans are included. A stock purchase plan is a plan under which an employee is allowed to buy stock in his employer. If the purchase price is less than fair market value of the stock at the time of the purchase, the discount is treated as an employer contribution to the plan. Under other types of plans, the employer makes actual contributions to the plan on behalf of the employee.

Employer contributions to stock bonus plans are also included whether or not the plan is an income tax qualified plan. A stock bonus plan is a bonus payable in stock, usually in the stock of the employer, which is deferred until retirement or termination of the employee.

Employer contributions to profit sharing plans which are not tax qualified are included. Those contributions to tax qualified profit sharing plans are employer contributions to a qualified benefit plan (see Section 201.59).

The term "existing contract" is defined to mean a contract with respect to employment in effect on November 13, 1971, all the elements of which has been reduced to a writing and which has been signed by both the employer and the employee. In order to qualify as an existing contract each of these requirements must be met. If qualified as an existing contract, the contract does not lose its character as executive or variable compensation, but is allowed to operate according to its terms within the limitations of §201.35. The plan or practice embodied in the expired contract is allowed to operate within the framework of the executive and variable compensation regulations as an incentive compensation plan or practice.

The term "pay practice previously set forth" is defined as an incentive compensation plan or practice in effect on November 13, 1971, which has been communicated to the affected employees, where the aggregate amount of the payment or award cannot be increased or withheld in its entirety by the exercise of any discretion, where the aggregate amount of the payment or award is determined by a definite method or clear formula and where the definite method or clear formula is applied only to a wage or salary amount without reference to profits, earnings, or any factor or item other than the actual wage or salary amount. In order to qualify as a pay practice previously set forth, each of these requirements must be met. If qualified as a pay practice previously set forth, the pay practice does not lose its character as executive or variable compensation but is allowed to operate according to its terms, within the limitations of §201.35. Once the pay practice expires within the meaning of §201.35 it can no longer operate under that section. However, the practice is then allowed to operate under the executive and variable compensation regulations as an incentive compensation plan or practice.

The criteria for eligibility as a "pay practice previously set forth" are very stringent. Accordingly, any plan or practice introducing an outside element, such as profits, as a factor bearing on the amount of bonus will not qualify. In effect, the only plans or practices for fixed amounts, of if variable, amounts based on the existing wages or salaries. For example, plans or practices providing for a bonus of two weeks pay or 10% of salary at year end which is payable regardless of profits or any other measure of business performance would meet this requirement.

Although it is clear that this restriction applies to the determination of the aggregate bonus pool for an appropriate employee unit, an employer would be erroneous to interpret the restriction as meaning that this plan falls within the definition because individual bonus awards are made as a percentage of the employee's base salary, even though the aggregate bonus pool was determined through the use of a profit-related formula.

Also defined is the term "plan, practice, or program unit." This is the unit of the employees who are eligible to participate in the plan, practice, or program unit. For example, an employee could be in three distinct units--one for base salary (his appropriate employee unit), one for bonuses (his bonus plan or practices unit), and one for stock options (his stock option plan unit).

The term "plan, practice or program year" is defined as the 12-month period of operation of a plan, practice or program. A plan, practice, or program must operate on a 12-month basis. If this is not the case the most reasonable 12-month period must be chosen.

6.4 EXECUTIVE SALARIES AND JOB PERQUISITES - §201.73

In general, the rules governing executive salaries are the same as those for other types of salaries. Amounts paid to an executive as a salary are wages and salaries. Any such amount would be includible in the average straight-time hourly rate of the executive's appropriate employee unit. However, executives often defer a portion of their salaries. The regulations provide special rules to take care of this situation. Amounts earned are considered as wages and salaries in the year earned. An amount is considered as being "earned" during the control year in which services are performed giving rise to the obligation to pay for the performance of such services whether or not such obligation is contingent upon the performance of future services or any other condition or restriction (including, but not limited to, an agreement not to compete). Salary earned in one control year deferred to a later control year would be wages and salaries in the control year earned and not in the control year paid.

For example, A is employed by M Corporation as an executive. M Corporation has elected a calendar control year for A's appropriate employee unit. For 1973, A's salary is $100,000, and payable as follows: $50,000 during 1973 and $10,000 for each of the five succeeding years provided A is still employed by M. The $100,000 is earned in 1973 and is wages and salaries with respect to A's appropriate employee unit in 1973, even though $50,000 is contingent upon A's continuing as an employee with M Corporation. The $10,000 payable in 1974, 1975, 1976, 1977, and 1978 is not wages and salaries with respect to that unit in those years. Likewise, salary earned in prior years but deferred to the current control year is not wages and salaries with respect to such year. Further, deferred amounts should be included in the computation of the base payroll period ASTHR.

Job perquisites paid to or furnished to or on behalf of an employee are wages and salaries, whether the employer paid for the benefit, either directly or indirectly or furnished the benefit in kind. For example, a meal allowance paid to an employee is a direct payment by an employer to an employee which may be a job perquisite. Where an employer pays an employee's rent there would be an indirect payment by the employer - a payment to a third person the owner of the hours for the benefit of the employee - which is a job perquisite. Where the employee lives in a house owned by his employer there is an in-kind furnishing of a service by the employer to the employee which is a job perquisite.

Job perquisites are included benefits. Job perquisites are valued at the employer's actual cost where it represents the only cost of the item; - otherwise they are valued at the reasonable cost of furnishing the item which must be determined from all the facts and circumstances involved.

6.41 §201.74 and 201.75

Sections 201.74 and 201.75 deal with incentive compensation plans and practices other than stock options. Essentially, the treatment of a "plan" or a "practice" is the same--the difference is in the definition.

6.411 Incentive Compensation Plans

The term "plan" refers to a formal written incentive compensation program where the bonus pool is determined by a clear method or formula.

A plan in effect on November 13, 1971, may continue to operate under §201.74 if there has been a payment prior to November 14, 1971, under the plan with respect to any one of the last three plan years ending prior to November 14, 1971, the administration is in good faith and the formula for determining the bonus pool is not changed. The requirements with respect to administration of a plan apply to a plan adopted on or after November 14, 1971, which is approved by the Pay Board or COLC pursuant to §201.78 or reported to the Pay Board or COLC pursuant to §201.79. These requirements also apply to a plan meeting the definition of §201.72(f) as an "existing contract" or §201.72(g) as "pay practice previously set forth" and no longer operating under §201.35.

6.412 Incentive Compensation Practices

The term "practice" means an informal, discretionary custom or habit of paying bonuses. A practice need not be in writing and need not have been communicated to the employees in the practice unit.

A plan which does not meet the definition of the term "plan" may qualify as a practice.

A practice in effect on November 13, 1971, may continue to operate under §201.75 if there has been a payment prior to November 14, 1971, under the practice as a matter of custom or habit with respect to two of the last three practice years ending prior to November 14, 1971 (or if the practice has been in effect less than two practice years prior to November 14, 1971, then with respect to one practice year ending before that date), the administration of the practice is in good faith and the formula, if any, for determining the bonus pool is not changed.

As in the case with plans, the requirements with respect to administration of a practice apply to a practice adopted on or after November 14, 1971, which is approved by the Pay Board or COLC pursuant to §201.78 or reported to the Pay Board or COLC pursuant to §201.79. Again, as in the case with plans, these requirements also apply to a practice meeting the definition of §201.72(f) as an "existing contract" or §201.72(g) as a "pay practice previously set forth" and no longer operating under §201.35.

Where a practice contains a formula to determine the bonus pool this formula is required to continue to apply from year to year. But where a practice does not contain a formula one is implied by the regulations. This implied formula is the base year amount with respect to the practice divided by the profits of the employer prior to Federal taxes with respect to the base year. This implied formula is required to continue to apply to determine the bonus pool from year to year.

An employer which is a sole proprietorship or a partnership will be treated as if it were a corporation. Accordingly, profits prior to Federal taxes are determined by subtracting from gross revenues from the business all expenses of doing business including a reasonable salary for the sole proprietor or the partners assuming that they were employees of the sole proprietorship or the partnership.

Where the employer is tax exempt under Federal income tax laws the gross revenues from the business of the employer are used instead of profits prior to Federal taxes.

In other cases, such as losses during the base year or extraordinary expenses reducing profits the employer may use bonus payments as a percentage of gross revenues for purposes of computing the implied formula.

6.413 Certain Nonqualifying Plans and Practices

Any plan or practice in effect on November 13, 1971, which fails to meet the condition of having made the required payment or payments before November 14, 1971, is considered as a new plan or practice within the meaning of §201.78(c) and in order to operate under §201.74 or §201.75 is required to be approved by the COLC.

Moreover, any plan or practice meeting the definition of §201.72(f) as an "existing contract" or §201.72(g) as a "pay practice previously set forth" and operating under §201.35 does not operate under §201.74 or 201.75 until such plan or practice no longer operates under §201.35.

6.414 Computing the Allowable Amount

The regulations establish an allowable amount that may be paid under a plan or practice without a charge against wages and salaries. This allowable amount is determined on the basis of the amount granted with respect to a plan or practice year. An amount is considered as being granted with respect to the plan or practice year it is generated under the plan or a calendar plan year. The amount generated under the plan is with respect to the calendar year. Also, assume a formula of 5 percent of profits above $100 million. For the 1972 plan year assume profits of $200 million. This would generate $500,000. This $500,000 is the amount granted with respect to the 1972 plan year whether or not that amount or any part of that amount was paid during calendar year 1972. (Note: However, excesses are charged as wages and salaries when paid.)

Most commonly a plan or practice is based on a formula pegged to profits over the plan or practice year. The amount of profits over that time will not be known until after the close of the plan or practice year. So, payment under a plan or practice normally follows the close of the plan or practice year. Thus, in the case of a plan or practice with a calendar plan or practice year the payment in March 1973 will be based on the profits of the 1972 calendar plan or practice year.

The allowable amount under a plan or practice in effect on November 13, 1971, for the first plan or practice year for which a payment is made on or after November 14, 1971, is the base year amount plus the base amount times the wage and salary standard established in §201.10(a). This formula may be illustrated as follows:

Base year amount = $100,000

Wage and salary standard = 0.055

($100,000 + ($100,000 X 0.555)) = 105,500

The base year amount for this type of plan or practice is the amount of an item of incentive compensation granted to the employees in the plan or practice unit with respect to any one of the last three plan or practice years ending prior to November 14, 1971, for which there has been a payment prior to November 14, 1971.

An amount does not qualify as a base year amount unless the base year ends before November 14, 1971, and the payment with respect to the base year is made before November 14, 1971. Thus, a plan or practice year ending on December 15, 1971, would not count as a base year. Also, a plan or practice year ending on September 30, 1971, with a payment with respect to that plan or practice year being made on December 15, 1971, would not qualify as a base year.

The allowable amount under a plan or practice approved by the Pay Board or COLC pursuant to §201.78 as a new plan or practice or reported to the Pay Board or COLC pursuant to §201.79 as a plan or practice of a new organization cannot exceed the base year amount with respect to that plan or practice in its first year of operation.

The base year amount with respect to a plan or practice approved by the Pay Board or COLC pursuant to §201.78 as a new plan or practice is the amount of any item of incentive compensation established by the Pay Board or COLC as the amount allowed to be granted with respect to the first consecutive 12 month period under which the plan or practice operates. The base year amount with respect to a plan or practice reported to the Pay Board or COLC pursuant to §201.79 as a plan or practice of a new organization is the amount of any item of incentive compensation granted under the plan or practice with respect to the first consecutive 12 month period under which the plan or practice operates provided the amount is not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Cost of Living Council.

After the first plan or practice year for which there has been a payment on or after November 14, 1971, the allowable amount for subsequent plan or practice years under any plan or practice is the allowable amount with respect to the preceeding plan or practice year plus that allowable amount multiplied by the wage and salary standard established in §201.10(a) times an adjustment factor for increases or decreases in the size of the plan or practice unit.

This formula may be illustrated as follows:

Base year = $100,000
Allowable amount (1st plan year after 11/14/71 for which there is a payment) = $105,500
Wage and salary standard = 0.055
Adjustment for increase or decrease in plan or practice unit (assumed) = 1.30
($105,500 + ($105,500 X 0.055)) X 1.30 = $144,693.25

The adjustment factor is designed to increase or decrease the size of the bonus pool to take effect of any changes in the size of the plan or practice into account. This adjustment is mandatory. The factor is a fraction. The numerator is the sum of base unit salary plus base unit salary additions minus base unit salary deletions. The denominator is base unit salary. The formula for this fraction may be stated as follows:

$$\frac{\text{(base unit salary + base unit salary additions) - base unit salary deletions}}{\text{base unit salary}}$$

Base unit salary is the total of the base salaries of all employees in the plan or practice unit on the last day of the plan or practice year for which the adjustment is being made who were not in the plan or practice unit on the last day of the base year. The annual salary rate in effect with respect to each such employee on the last day of such plan or practice year is used. This includes only those employees to whom bonuses were not granted with respect to the base year but are to be granted with respect to the plan or practice year for which the adjustment is being made. Only those employees who are eligible under the terms of the plan or practice are included. Where eligibility is discretionary, the past practice of the employer in selecting participants determines the rules of eligibility. A change in eligibility is a modification or revision of the plan or practice requiring Pay Board prior approval pursuant to §201.78. It is also noted that employees added to a plan or practice unit solely on account of a merger or acquisition occurring on or after November 14, 1971, are not to be included.

Base salary deletions is the total of the base salaries of all individuals who were in the plan or practice unit on the last day of the base year and to whom bonuses were granted with respect to the base year but who are not in the plan or practice unit on the last day of the plan or practice year for which the adjustment is being made. The salary amount is computed using the annual salary rate in effect with respect to each such individual on the last day of the base year.

The base year for purposes of the adjustment calculation is the plan or practice year used to determine the base year amount with respect to the plan or practice.

The adjustment calculation may be illustrated by the following example.

Example 1:

Assume Employer A has a plan meeting all the requirements of §201.74(a). The plan has a calendar plan year. The plan year chosen by A as the base year is the 1968 calendar plan year. In March 1969 employees M, N, O, P, and Q were granted cash bonuses with respect to the 1968 calendar plan year. M's salary was $100,000 per year as of the last day of the 1968 calendar plan year. N's salary was $85,000 per year of the last day of the 1968 calendar plan year. Employees O, P, and Q had salaries of $65,000 per year as of the last day of the 1968 calendar plan year. On January 1, 1970, M took a position with another employer. On July 1, 1971, Q retired. S, T, and U have been employed at A at various times since the close of the 1968 calendar plan year. Each is eligible to receive a bonus under the plan as their positions are specifically included under the plan's eligibility rules. Each will be granted a bonus with respect to the 1972 calendar plan year.

S's salary is $65,000 as of the last day of the 1972 calendar plan year. T's salary is $75,000 as of the last day of the 1972 calendar plan year. U's salary is $75,000 as of the last day of the 1972 calendar plan year. U, however, was employed by A when A acquired U's former employer as a result of a merger. The adjustment factor for grants with respect to the 1972 plan year is determined as follows:

Base unit salary =

$100,000 - M's salary
85,000 - N's salary
65,000 - O's salary
65,000 - P's salary
65,000 - Q's salary
$380,000

Base unit salary additions =

$ 65,000 - S's salary
75,000 - T's salary
$140,000

Base unit salary deletions =

$100,000 - M's salary
65,000 - Q's salary
$165,000

$$\frac{(\ (\$380{,}000 + 140{,}000)\ -\ \$165{,}000)}{\$380{,}000} = \ .9342 \text{ or } .93$$

In the case of a plan or practice meeting the definition of §201.72(f) as an existing contract or §201.72(g) as a pay practice previously set forth and operating under §201.35 the allowable amount is the amount granted under the plan or practice during each plan or practice year the plan or practice operates under §201.35. When this type of plan or practice no longer operates under §201.35 the allowable amount is determined in the same manner as the allowable amount with respect to any other plan or practice after the first plan or practice year for which there has been a payment on or after November 14, 1971. For purposes of the adjustment calculation with respect to this type of plan or practice the base year is the last plan or practice year the plan or practice operated under §201.35.

6.415 Method of Measuring Grants

Amounts granted with respect to a plan or practice are measured on an item by item basis with respect to the plan or practice year chosen as the base year. Thus, a single plan or practice with three items of incentive compensation would determine the allowable amount with respect to each item from the same base year. Further, items cannot be traded for each other. So a bonus payable in stock cannot be substituted for an equivalent dollar value of phantom share units.

A bonus in cash is measured in dollars and cents.

A bonus stock or other property is measured in dollars and cents equal to the fair market value of the stock or other property at the time of the grant regardless of any conditions or restrictions with respect to the stock or property.

Phantom share units are measured in units. There are two types of units. One is a dividend unit, the other is a share unit. Each type of unit must be calculated separately.

Employer contributions to a discount stock purchase plan are measured in dollars and cents equal to the difference between the fair market value of the stock and the amount paid for the stock by the employee without taking any conditions or restrictions with respect to the stock into account. A plan or practice which is not qualified for income tax purposes as a stock purchase plan and which allows the employees to elect not to purchase stock once the plan or practice begins is a stock option plan and not a stock purchase plan. Any plan or practice which is qualified for income tax purposes as a stock purchase plan is considered as a stock purchase plan whether or not the election discussed above is available to the employees under the plan.

Performance share units awarded on or after November 14, 1972, under a performance share plan which has been approved by the Pay Board or COLC pursuant to §201.78 are valued in dollars and cents at the fair market value of the stock to be awarded under the plan assuming attainment of 75 percent of the performance goals under the plan at the fair market value of the stock at the time the performance share unit is granted but spreading this amount over the performance period of the plan. Performance share units awarded under a performance share plan which does not require approval by the Pay Board or COLC pursuant to §201.78 are valued at the fair market value of the stock to be awarded assuming at least a 75 percent attainment of the performance goals under the plan at the fair market value of this stock at the time the unit is awarded.

6.416 Spillover of Amounts in Excess of the Allowable Amount

Where the amount of any item of incentive compensation is in excess of the allowable amount the excess can be charged to the increase in wage and salaries allowable to the appropriate employee units of the employees in the plan or practice unit. The amount of excess apportioned to any appropriate employee unit is determined by multiplying the number of employees in the appropriate employee unit who are in the plan or practice unit by a fraction. The numerator of the fraction is the amount of the excess. The denominator of the fraction is the number of employees in the plan or practice unit. This formula may be illustrated as follows:

Plan or practice unit = 100
Members of the appropriate employee unit who are also members of the plan or practice unit = 50
Amount of excess = $100,000

$$50 \text{ X } \frac{\$100{,}000}{100} = \$50{,}000$$

The amount of excess apportioned to an appropriate employee unit is considered as a wage and salary increase during the control year paid. If the amount or any part of the amount of excess is not paid but is deferred, then the amount deferred is considered as having been paid during the control year it would have been paid had it been paid. For example, assume a plan with a calendar plan year. There are 100 employees in the plan unit. Of the 100 employees in the plan unit 50 are members of the same appropriate employeee unit. This appropriate employee unit has a November 14 to November 13 control year. The allowable amount with respect to the plan year ending December 31, 1971, is $100,000. On April 15, 1972, $200,000 is paid to the employees in the plan unit. There is $100,000 in excess of the allowable amount. The amount of excess apportioned to the appropriate employee unit is $50,000. This $50,000 is wages and salaries during the control year beginning on November 14, 1971, and ending on November 13, 1972. Assume instead that the appropriate employee unit had a short control year beginning on November 14, 1971, and ending on December 31, 1971, and a 12-month control year beginning on January 1, 1972, and ending on December 31, 1972. The $50,000 is wages and salaries during the control year beginning January 1, 1972, and ending on December 31, 1972. This is so even though the entire amount of the bonus is granted with respect to the plan year ending on December 31, 1971, for the purposes of computing the allowable amount with respect to that plan year.

The amount of excess apportioned to an appropriate employee unit as wages and salaries is considered as being a pay adjustment for purposes of the prenotification and reporting requirements for Part 202 at the same time the amount of excess is considered as wages and salaries with respect to that unit.

The amount of excess apportioned to an appropriate employee unit is in lieu of otherwise allowable wage and salary increases. Thus, the amount of the excess apportioned to an appropriate employee unit plus the amount of other wage and salary increases cannot exceed the wage and salary increase allowable with respect to that unit for any control year. Accordingly, the amount of any excess apportioned to an appropriate employee unit and charged as a wage and salary increase goes into the base compensation rate for purposes of computing the allowable wage and salary increase with respect to that unit for the control year after the control year the excess is so charged. The amount of the excess is reported as an included benefit in Item 22(10) of the P.B. 3.

6.5 STOCK OPTIONS - §201.76

6.51 General

The Pay Board recognized three basic forms of stock options and provides separate treatment for each. In summary, these are:

1. Stock options granted before December 17, 1971;

2. Stock options granted after December 16, 1971, under plans that meet certain requirements;

3. Stock options granted after December 16, 1971, either informally or under plans that don't meet requirements established by the Pay Board.

6.52 Stock Options Granted Before December 17, 1971 (§201.76(a))

Stock options granted before December 17, 1971, in writing, under a stock option plan adopted prior to November 14, 1971, and in effect on November 13, 1971, whether or not it meets the requirements of §201.76(b), may be exercised in accordance with their terms and (1) are neither limited to the extent of the number of shares covered nor (2) deemed an increase in wages and salaries.

6.53 New Stock Options Granted Under Plans Meeting Pay Board Requirements (§201.76(b)

An employer may grant stock options, without the grant or the subsequent exercise of the options being considered an increase in wages and salaries provided the options are in writing and the plan under which they are granted meets the following requirements:

1. is in effect on November 13, 1971;

2. was approved by the employer's stockholders within 12 months of its adoption;

3. stipulates a maximum number of shares to be made available for stock option grants;

4. establishes and maintains the option price of shares that may be issued at not less than 100% of the fair market value of shares on the date the option is granted;

5. is administered in accordance with the customary manner associated with such plans.

Plans meeting the above requirements, regardless of whether "qualified" or "non-qualified" under Section 422 of the Internal Revenue Code are treated identically under the Pay Board regulations. That is, although grant and exercise are not considered an increase in wages and salaries, the regulations impose limitations on the number of shares that may be issued under stock options granted during an employer's fiscal year. This limitation is primarily contingent upon the employer's past practice. Rules are provided for computing the aggregate share limitation for fiscal years beginning prior to November 14, 1972, and fiscal years beginning on or after November 14, 1972 (the effective date of the recodified regulations).

1. The aggregate share limitation applicable to fiscal years beginning prior to November 14, 1972, is computed as follows:

a. Plans operating for 3 or more fiscal years ending prior to November 14, 1971. The number of shares subject to options that were granted during the 3 fiscal years of the employer ending prior to November 14, 1971, divided by 3.

b. Plans in effect for 3 or more full fiscal years as of November 14, 1971, but no options were granted during the last 3 fiscal years ending before November 14, 1971 -- 25% of the shares remaining available for option as of November 14, 1971.

c. Plans in effect for at least one full fiscal year but less than 3 full fiscal years as of November 14, 1971 -- the number of shares subject to options that were granted during the number of fiscal years, or fraction of fiscal years, that the plan operated through the fiscal year ending prior to November 14, 1971, divided by the number of such fiscal years.

d. Plans in effect for less than a full fiscal year as of November 14, 1971 -- the number of shares subject to options granted prior to November 14, 1971, or 25% of the aggregate shares authorized for options during the life of the plan, whichever is greater.

e. Plans in effect on November 13, 1971, under which no options were granted during the life of the plan -- 25% of the aggregate shares authorized for options during the life of the plan.

2. The aggregate share limitation applicable to fiscal years beginning on or after November 14, 1972 -- is the number of shares subject to options that were granted during the existence of the plan up to the last day of the fiscal year just ended divided by the number of fiscal years the plan was in existence multiplied by a fraction the numerator of which is the number of employees who are expected to receive stock options in the current fiscal year and the denominator of which is the average number of employees who exercised options during or held options at the end of each fiscal year the plan was in existence.

Example: (Assume a calendar fiscal year with the plan adopted on January 1, 1967.)

	Fiscal Year						
	67	68	69	70	71	72	Annual Average
# of shares for which options were granted (000's)	20	10	10	30	15	15	16.7
# of employees holding options at the end of the year or exercising during the year	15	20	25	25	30	30	24

Assuming the employer intends to grant options to 30 employees during the current fiscal year, then the aggregate share limitation for the current fiscal year is 20,875 shares.

$$(16{,}700 \text{ shares} \times \frac{30}{24})$$

6.54 New Stock Options Granted Under Plans Not Meeting the Requirements of Section 201.76(b)

Options granted under a plan which does not meet the criteria set out in Section 201.76(b) are to be treated as wages and salaries at the time of grant. In addition to a charge as wages and salaries at the time of grant, these options will also be treated as wages and salaries at the time of exercise.

The wage and salary amounts chargeable are to be apportioned back to the appropriate employee units in the same manner as excess bonuses. (See section on excess bonuses.)

Because there is no precise ascertainable value to a right to purchase stock at its then fair market value, it was necessary to assign a value in order to be able to charge a calculable amount as wages and salaries where the stock option rules were not met. This value was established at 25% of the fair market value of the stock at the time of granted based on reasonable expectations of value to the employee and is called the option premium. If the options were granted at a price less than the fair market value of the stock, there would be an additional charge equal to the amount of the discount on the price of the stock.

At the time of subsequent exercise the amount chargeable is the difference (if any) between the fair market value of the stock at the time of exercise over the sum of the original 25% premium plus the fair market value of the stock at time of grant.

Example:

Facts	Date of Grant	Date of Exercise
Fair Market Value	$20	$60
Option Price	$10	$10

Computation	Increase in Wages and Salaries		
	Date of Grant		Date of Exercise
25% Option Premium	$ 5	Current FMV Less	$60
Discount From FMV	$10	Option Premium	($ 5)
		Less	
		FMV at Grant	($20)
Total Charge	$15		
		Total Charge	$35

6.6 SALES OR COMMISSION PLANS OR PRACTICES AND PRODUCTION INCENTIVE PROGRAMS: §201.77

A sales or commission plan or practice or production incentive program established and in effect prior to November 14, 1971, may continue to operate according to its terms. A plan, practice, or program is required to directly reflect the performance of the employee participant in the form of sales or production output. A plan, practice, or program may have a formula based on sales or production either in units or dollars. However, a plan, practice, or program having a formula based on profits will generally not qualify.

A plan, practice, or program adopted on or after November 14, 1971, and reported to the Pay Board or COLC pursuant to §201.79 as a plan, practice, or program of a new organization is also allowed to operate according to its terms as discussed above.

A plan, practice, or program adopted on or after November 14, 1971, and approved by the Pay Board or COLC pursuant to §201.78 as a new plan, practice, or program is also allowed to operate according to its terms but any payments or awards made under such plan, practice, or program are generally considered increases in wages and salaries.

Any amount paid under a plan, practice, or program is wages and salaries. However, any increase in the amount of compensation under a plan, practice or program from one plan, practice, or program year to the next plan, practice, or program year which results from an increase in sales or production volume either in units sold or produced or in dollar value of units sold or produced where the rate under the plan, practice, or program remains constant is not regarded as an increase in wages and salaries for purposes of computing the allowable wage and salary increase with respect to the appropriate employee units of the employees in the plan, practice, or program unit.

If the rate under a plan, practice, or program is reduced and the amount of compensation under the plan, practice, or program is increased from one plan, practice, or program year to the next plan, practice or program year due to increased volume, the increase in the amount of compensation is not an increase in wages and salaries for purposes of computing the allowable wage and salary increase with respect to the appropriate employee units of the employees in the plan, practice, or program unit.

Where the rate under a plan, practice, or program is increased or the starting point for payment under the plan, practice, or program is decreased and that change results in an increase in the amount of compensation under a plan, practice, or program from one plan, practice, or program year to the next plan, practice, or program year the increase in the amount of compensation is an increase in wages and salaries for purposes of computing the allowable wage and salary increase with respect to the appropriate employee units of the employees in the plan, practice, or program unit. This increase is determined by using the volume and the increased rate for the plan, practice, or program year the rate is increased. When the amount of compensation under the plan, practice, or program for the plan, practice, or program year the rate is increased surpasses the amount of compensation that would have resulted under the rate in effect for the previous plan, practice, or program year the amount of such excess is considered to be an increase in wages and salaries with respect to the appropriate employee units of the employees in the plan, practice, or program unit.

Example 1:

Company X had a sales commission plan which pays each salesman 5% of his gross sales after he has met his quota of $100,000. The plan year is the calendar year. In 1971 there were three salesmen whose gross sales and commissions were as follows:

1971 Salesman	Gross Sales	Commission
A	$400,000	$15,000
B	$500,000	$20,000
C	$360,000	$13,000

In 1972 a competitor introduced a new product which was expected to reduce the market for Company X's product. As a result Company X removed its $100,000 quota, and salesmen received a 5% commission on all sales. Although sales did drop, and commission decreased despite the dropping of the quota, there is a changeable increase to wages and salaries, which is the difference between the amount paid under the new plan, and the amount that would have been paid on the 1972 volume under the old plan:

1972 Salesman	Gross Sales	Commission Paid	Commission that Would Have Been Paid Under Old Plan on '71 Volume
A	$300,000	$15,000	$10,000
B	$300,000	$15,000	$10,000
C	$200,000	$10,000	$ 5,000
TOTAL:		$40,000	$25,000

The changeable increase to wages and salaries is $15,000, the difference that results between the application of the old and new plan to the 1972 sales volume.

This increase in wages and salaries is apportioned to the appropriate employee units of the employees in the plan, practice, or program unit. The amount apportioned to any appropriate employee unit is determined by multiplying the number of employees in the plan, practice, or program unit by a fraction. The numerator of the fraction is the amount of the increase. The denominator of the fraction is the number of employees in the plan, practice, or program unit. This formula may be illustrated as follows:

Plan, practice or program unit = 200

Members of plan, practice, or program unit who are also members of appropriate employee unit = 50

Amount of increase = $20,000

$50 \text{ X } \frac{\$20,000}{200} = \$\ 5,000$

The amount of increase apportioned to an appropriate employee unit is considered as a wage and salary increase in the control year paid. If the increase or any part of the increase is not paid but is deferred then the increase deferred is considered as having been paid during the control year it would have been paid had it been paid.

The amount of increase apportioned to an appropriate employee unit is considered as being a pay adjustment for purposes of the prenotification and reporting requirements of Part 202 at the same time the amount of increase is considered as an increase in wages and salaries to that unit.

The amount of increase apportioned to an appropriate employee unit is in lieu of otherwise allowable wage and salary increases. Thus, the amount of increase apportioned to an appropriate employee unit plus the amount of other wage and salary increases cannot exceed the wage and salary increase allowable with respect to that unit for any control year. Accordingly, the amount of any increase apportioned to an appropriate employee unit and charged as a wage and salary increase goes into the base compensation rate for purposes of computing the allowable wage and salary increase with respect to that unit for the control year after the control year the increase is so charged.

Any change in the method of calculating the earnings under a plan, practice, or program which results in an increase in wages and salaries larger than the increase allowable with respect to any appropriate employee unit in the plan, practice, or program unit must be submitted to the COLC pursuant to §201.78.

Any plan, practice, or program which does not have a specified plan, practice, or program year is considered as having the plan, practice, or program year beginning on November 14 and ending the following November 13.

6.7 NEW OR REVISED PLANS, PRACTICES, AND PROGRAMS: §201.78

This section only applies to Phase II and the mandatory sector during Phase III. The voluntary sector during Phase III is governed by the guidelines contained in Appendix B to Part 130 of the Cost of Living Council's Regulations.

6.8 REPLACEMENT OF EXISTING PLANS, PRACTICES, OR PROGRAMS

A plan, practice, or program operating under the regulations which has expired on account of the passage of time may be replaced by a new plan, practice, or program without Pay Board or COLC prior approval where the aggregate amount of compensation payable under the new plan, practice, or program is not increased over the old plan, practice, or program. The determination of whether the aggregate amount of compensation is increased by a replacement plan, practice, or program is made by comparing the results under both the old plan, practice, or program and the new plan, practice, or program using the information from the last plan, practice, or program year the old plan, practice, or program operated and the formula contained in the new plan, practice, or program.

For example, assume that Employer A has an incentive bonus plan operating under §201.74. The plan was adopted on January 1, 1968, and was to expire after five years. The plan contained specific rules of eligibility establishing a class of employees to participate under the plan. This class was all level 10 executives who earned at least $25,000 per year. The formula under the plan was two percent of profits above $10 million. During 1972 profits were $25 million. The payout under the plan in March 1973 was $300,000. A new plan was adopted on January 1, 1973, to replace the plan which expired on December 31, 1972. This plan contained the same formula and the same eligibility requirements as the old expired plan. Although profits during 1973 may increase the aggregate amount of compensation payable under the new plan did not increase. This is because the comparison between the new plan and the old expired plan is made by using the formula under the new plan and the profits under the old plan for the last plan year the plan operated. If the new plan had changed the eligibility requirements to expand the class of eligibles the new plan is required to be submitted to the Pay Board for prior approval. This is because the new plan does not replace an existing plan. The new plan is different from the old plan in that there is a new expanded class of eligibles. If the new plan had changed the payout under the plan from cash to stock or to phantom stock the new plan is required to be submitted to the Pay Board or COLC for prior approval. This is because the new plan does not replace an existing plan. The new plan is different from the old plan in that one is payable in stock or phantom units whereas the other was payable in cash.

6.81 Replenishment of Stock Option Plans

Where all of the shares reserved under a stock option plan have been granted under options the plan is considered as having expired on account of the operation of time. So, where there are no shares remaining under an existing stock option plan, but the plan has not expired because there is time left under the plan the plan may be replaced. This is called replenishment. A plan may also be replenished where all of the shares reserved under the plan have been granted under stock options but shares still remain under the plan.

This situation occurs where options lapse and the shares under option go back into the plan. For example, assume that a plan was adopted on January 1, 1968, and was to expire after 10 years. There were 100,000 shares of stock reserved for options under the plan. Options granted to employees expire six months after their employment ends. Shares under expired options go back into the plan. On December 31, 1972, 100,000 shares had been granted under option but there were 10,000 shares remaining because options had been allowed to expire by departing employees. The plan can be replenished if the existing plan is cancelled prior to replenishment and the fact of replenishment does not increase the allowable number of shares to be issued under new stock options under the replenished plan.

Replenishment is available to stock option plans meeting the requirements of Pay Board qualification and those plans not meeting those requirements so long as the plan operates under the provisions of §201.76. Thus, a stock option plan meeting the requirements of subdivisions (a) through (d) of §201.76(b)(1)(i) can be replenished. And thus, a stock option plan in effect on November 13, 1971, or approved by the Pay Board or COLC pursuant to §201.78 as a new stock option plan, or reported to the Pay Board or COLC pursuant to §201.79 as a stock option plan of a new organization and not meeting the requirements of subdivisions (a) through (d) of §201.76(b)(1)(i), for example, a discount stock option plan, can be replenished.

As is the case with replacement of existing plans where a plan is replenished the aggregate amount of compensation payable under the plan cannot be increased, the eligibility requirements cannot be changed, and the type of compensation cannot be altered.

6.82 Modification or Revision of Plans, Practices, or Programs

Incentive compensation plans or practices operating under the regulations can be modified or revised without Pay Board or COLC approval providing the aggregate amount of compensation under the plan or practice as revised or modified is not increased. The test is to compare the results under both the old plan or practice and the new plan or practice using the information from the last plan or practice year the old plan or practice operated and the formula under the new plan or practice. The eligibility requirements, performance goals or targets, and type of compensation under the plan or practice cannot be changed.

The method of calculating earnings under sales or commission plans or practices or production incentive programs can be changed without Pay Board or COLC prior approval where any increase in wages and salaries is charged to the appropriate employee units of the employees participating in the plan, practice, or program unit as provided in §201.77. Where the increase in wages and salaries cannot be absorbed by anyone of the appropriate employee units participating in the plan, practice, or program unit the plan, practice, or program is required to be submitted to the Pay Board for prior approval.

6.83 Adoption of New Plans, Practices, or Programs

A new plan, practice, or program which was not in effect on November 14, 1971, or which did not replace a plan, practice, or program in effect on that date or approved by the Pay Board or COLC pursuant to §201.78 as a new plan, practice, or program, or reported to the Pay Board or COLC pursuant to §201.79 as a plan, practice, or program of a new organization is required to be submitted to the Cost of Living Council for prior approval. Approval of a new plan, practice, or program is subject to the terms and conditions that may be imposed by the COLC. Unless an exception is warranted, the amount payable under a plan, practice, or program with respect to the first 12-month period the plan, practice, or program operates is chargeable against the allowable wage and salary increase of the appropriate employee units of the employees in the plan, practice, or program unit. This amount is considered as a wage and salary increase with respect to each appropriate employee unit for the control year during which payments or awards are made under such plan, practice, or program. In determining whether or not to approve any plan, practice, or program or whether or not to charge the amount payable under a plan, practice, or program to the allowable wage and salary increase with respect to the appropriate employee units of the employees in the plan, practice, or program unit the COLC will look to all the facts and circumstances involved in each case and will utilize the exception criteria contained in § 201.30.

6.84 [illegible] Plans, Practices, or Programs

A plan, practice, or program in effect on November 13, 1971, meeting the definitions of § 201.72(f) as an existing contract or § 201.72(g) as a pay practice previously set forth no longer operative under § 201.35 is allowed to operate under the applicable provisions of the regulations.

6.9 NEW ORGANIZATIONS AND CHANGES IN ORGANIZATIONAL FORM: § 201.79

This section [illegible] Phase II and firms in the mandatory sector during Phase III. For firms in the nonmandatory sector, this section serves as a guideline.

6.91 New Organizations

An organization not a successor to an existing organization formed on or after November 14, 1971, has 90 days after the day of establishment to report any incentive compensation plans or practices or sales or commission plans or practices, or production incentive programs to the COLC. An organization is a successor to an existing organization where the organization merely goes through a change in form of legal organization. For example, a sole proprietorship is incorporated. The corporation is a successor organization. Two sole proprietors form a partnership. The partnership is a successor organization. A corporation spins off a subsidiary as a separate corporation. The former subsidiary is a successor organization. Two corporations are consolidated into a new corporation. The new corporation is a successor organization. A corporation is merged into another corporation. The surviving corporation is a successor organization. Examples of changes resulting in creation of new organizations which are not successors to existing organizations include an individual who was not previously engaged in a business entering that business as a sole proprietor, and an individual who was not previously engaged in a business entering that business with another individual who also was engaged in that business as a partnership, or as a corporation.

An organization is considered as having been established on the later of the day of its legal existence or the day of its commencement of business. The commencement of business occurs when employees are hired, offices are opened, or products are made or sold. The commencement of business does not mean that any revenue must be generated or that revenues generated must result in profits.

A report of a new organization is required to describe in detail all incentive compensation plans, practices, and programs including the amount of each item of compensation including salaries and job perquisites. Where available the report should state compensation levels of appropriate employee units or the employees in those appropriate employee units in comparable jobs in nearby firms. The report is also required to demonstrate that the establishment of the new organization and the plans, practices, or programs was not for the purpose of circumventing the intent of the wage and salary stabilization program and is not unreasonably inconsistent with the intent and purpose of the wage and salary stabilization program or the policies of the Pay Board. A new organization establishing only salary, perquisites, or qualified benefit plans, practices, or programs is not required to file a report with the COLC. However, where any incentive compensation plan or practice or sales or commission plan or practice or production incentive program is established, information with respect to salary, perquisite, or qualified benefit plans, practices or programs is required to be included in the report. Any plan, practice, or program not reported within 90 days after establishment of the organization is considered as a new plan, practice, or program and is required to be submitted to the COLC for prior approval pursuant to § 201.78.

6.92 Changes in Organizational Form (Other than Mergers and Similar Organizations)

An organization doing business in a particular organizational form which on or after November 14, 1971, changes that form and before, after, or as part of on account of this change adopts new incentive compensation plans or practices or sales or commission plans or practices or production incentive programs which are successors to plans, practices, or programs in effect before such change has 90 days after such change to report any such plans, practices, or programs to the COLC. A plan, practice, or program is a successor to another plan, practice, or program where the plan, practice, or program does not increase the aggregate amount of compensation that would have otherwise been granted, whether or not currently under a plan, practice, or program unit without taking the reorganization into account. A plan, practice, or program which is not a successor plan, practice, or program is a new plan, practice, or program and is required to be submitted to the COLC for prior approval pursuant to § 201.78. A report of an organization doing business in a particular organizational form which changes that form is required to describe in detail all successor plans, practices, and programs including the amount of each item of actual or anticipated compensation including salaries and job perquisites. Where available the report should state compensation levels of appropriate employee units or the employees in those appropriate employee units in similar positions in the predecessor organizations prior to the change. The report is also required to demonstrate that the change in form of business organization and the establishment of the plans, practices or programs were not for the purpose of circumventing the intent of the wage and salary stabilization program or the policies of the Pay Board.

6.93 Mergers and Similar Reorganizations

An organization which merges with, or otherwise acquires, another organization may continue both its and the acquired organization's incentive compensation plans or practices or sales or commission plans or practices or production incentive programs. The employees of the acquired organization may be added to the plans, practices, and programs of the acquired corporation. However, in the case of incentive compensation plans or practices other than stock options, there can be no increase in the amount of compensation under the plan or practice on account of employees added to the plan or practice unit solely on account of a merger or similar acquisitions occurring on or after November 14, 1971. The plans, practices, and programs of both the acquired and the acquiring organizations are required to be operated separately. For example, the stock option plans of an acquired corporation may continue to operate using stock of the acquiring corporation under the terms and conditions imposed under the stock option plan of the acquired corporation but using the stock of the acquiring corporation in lieu of the stock of the acquired corporation adjusting for the fair market values of the stock of each on the date of the acquisition. Where an acquiring organization wants to combine its plans, practices, or programs with the plans, practices, or programs of an acquired organization both of these plans, practices, or programs are required to be submitted to the COLC for prior approval pursuant to § 201.78. For example, if an acquiring corporation with a stock option plan wanted to end the plan of an acquired corporation and combine both plans into a single plan covering both the employees of the acquired and acquiring corporations, both plans are required to be submitted to the COLC for prior approval. Where there has been a merger or similar reorganization a plan, practice, or program which is not a successor plan, practice, or program is a new plan, practice, or program requiring Pay Board prior approval pursuant to § 201.78.

6.94 Carryover or Attributes

A change in organizational form by an employer does not affect such attributes as appropriate employee units, plan, practice, or program units or years or control years. These attributes are carried over by an employer undergoing a change in organizational form unless otherwise required by the change. For example, on July 1, 1972, a partnership incorporates. The partnership has an incentive compensation plan with a calendar plan year. The corporation can not change the plan year merely because of the change in form of business organizations. But, if the corporation adopted a fiscal year beginning on July 1 and ending the following June 30, for all purposes then the payment under the incentive compensation plan is based on the profits earned during the corporation's new fiscal year. The corporation is permitted to adopt a July 1 to June 30 plan year.

6.10 DETERMINATION OF TYPE OF PLAN

6.101 General

Since the Regulations provide for different treatment for different types of Executive and Variable Compensation Plans or Practices, the determination of the type of plan being audited is critical since an incorrect "plan type" determination will result in the application of inappropriate Sections of the Regulations and possible findings of violation where none exists. The determination of plan type for Economic Stabilization purposes should be made by examination of the plan document(s) or practice document(s), if in writing to determine how the Plan or Practice operates. Caution should be exercised in relying on the Plan titles, since there are no standarized Plan titles in use throughout industry. (For example, a Plan titled "Employee Stock Option Plan" may, in fact, be an "Employee Stock Purchase Plan"). For Practices not reduced to writing, a verbal description of how the Practice operates should be obtained, together with any memorandums or letters issued to participants which describe the Practice.

In order to assist in the determination of Plan type, listed below for each Section of Sub-part F of the Pay Board Regulations are the kinds of Plans or Practices that are covered by each Section, together with a brief description of the primary characteristics of such Plans or Practices.

6.102 Section 201.74 - Incentive Compensation Plans

This Section is applicable to a wide variety of Incentive Compensation Plans which have been reduced to writing and include a clear-cut formula or method to determine the total aggregate amount payable under the plan or the total aggregate employer contribution that can be made under such plan. Not included are Stock Option Plans or Sales, Production or Commission Plans under which payments are related to changes in sales volume or production output.

Bonus Plans, whether payable to executives or other employees not covered by union contracts, are the most common Incentive Compensation Plans covered by this Section. Such Plans usually contain a formula based on changes in profit levels or earnings from which a bonus pool is generated. Employees participating are granted individual bonus awards based on such factors as their base compensation, a distribution formula, performance appraisal or management discretion or combination of such factors.

Current Cash Bonus Plans provide for lump sum cash bonus awards payable shortly after the close of the company performance measurement period, usually a year. Deferred Cash Bonus Plans provide for the payment of some or all of the bonus awards after an "earn-out" period or after retirement. Current or Deferred Stock Bonus Plans operate similarly to cash bonus plans, except that the award is in shares of stock, rather than cash. Qualified Stock Bonus Plans are also covered by Section 201.74 and are not considered Qualified Benefit Plans pursuant to Section 201.59 of the Regulations.

Employee Stock Purchase Plans (whether qualified or not) are also incentive compensation plans covered by Section 201.74. Under typical plans of this type, employees subscribe to purchase (usually through payroll deduction) a stipulated number of shares of stock at discount from fair market value over a period of time or to contribute X dollars for the purchase of stock through payroll deductions over a specified period of time and the company contributes an amount to each employee's account. In some plans, employees may elect to take a refund of their cash contributions prior to the purchase date and cancel the purchase of the stock. Stock purchase plans differ from Stock Options in that they involve the financing of the sale of stock through payroll deductions for relatively small amounts of shares. Occasionally, a company may have a Stock Purchase Plan with no employer contribution, and under which stock can be purchased at 100% or higher of Fair Market Value. Such plans do not result in any increase in wages and salaries and are not subject to Section 201.74.

"Phantom" Stock Plans are also covered by this Section. Under a typical Phantom Stock Plan, an employee is awarded a number of imaginary "shares" or "share units". At the end of a specified period of time (usually 5 years) the employee is paid a bonus (in cash or in stock) equivalent to the appreciation in market value of shares or "units" of stock awarded above their value on the date of the award. Some Plans also provide for crediting the employee's account with "dividend" equivalents - e.g., amounts equal to the dividends paid per share during the holding period.

Performance Share Plans are a variation of bonus and phantom stock plans. Participants are awarded a number of shares of stock contingently at the beginning of an award period. To receive the award at the end of an earn-out period (usually 3-4 years), these plans require that a predetermined company performance target or goal must be met (such goals are often expressed as increased earnings per share). If the goal is only partially met, the award is reduced and improvements in company performance below a stipulated minimum results in cancellation of the award. "Dividend Equivalents" are also often awarded contingently in some Performance Share Plans.

There are innumerable variations of the types of incentive compensation plans described above which precludes providing a fully comprehensive list. Fortunately, for Wage Stabilization purposes, if a variable compensation plan is clearly (1) not a Stock Option Plan; (2) is not a Sales or Production Incentive Plan; (3) is not covered by a Collective Bargaining Agreement, and (4) is not an employment contract, it is an Incentive Compensation Plan subject to Section 201.74 of the Regulations.

6.103 Section 201.75 - Incentive Compensation Practices

Employers (particularly smaller firms) may pay or award bonuses to executives and other non-union employees, but may not have a formal plan document reduced to writing or if such "plan" has been reduced to writing, it may not contain a fixed formula or method for determining the aggregate amount payable under such "plan", and therefore, does not meet the definition of a Plan under Section 201.74. Accordingly, Section 201.75 was included in the Regulations to cover such Incentive Compensation Practices.

Typical Incentive Compensation Practices generally follow one of the two patterns listed below:

1. Discretionary Bonus "Plans" - Company Management or the Board of Directors may award cash or stock bonuses, payable currently or deferred to selected employees, regardless of company performance and based solely on Management discretion.

2. Management by Objectives "Plans" - while such plans may specify a formula or certain targets or goals, the formula or goals are changed periodically - often annually and therefore are not fixed.

6.104 Stock Options - Section 201.76

A stock option is essentially a right to purchase stock at a fixed price over a specified period of time. If the market value increases over the option price, the optionee can exercise his option by purchasing the stock covered by the option from the company at the lower option price. Obviously, if the market value decreases below the option price, optionees will not exercise options, but will allow them to expire.

Stock Option Plans will frequently indicate by title or in the description of the Plan whether the Plan is "Qualified" or "Non-Qualified". This reference is to the tax status of the Plan under IRS Regulations.

An IRS Qualified Option will nearly always meet the requirements of Section 201.76 (b) since the tax regulations require such plans to (1) receive approval of the stockholders; (2) specify the aggregate number of shares set aside for option grants, and (3) issue options at a price of at least 100% of Fair Market Value on date of grant.

IRS Non-Qualified Option Plans may meet the requirements of Section 201.76 if the option price is required to be at least 100% of Fair Market Value on date of grant. However, IRS Non-Qualified Options issued at a price of less than a fair market value on date of grant do not meet the requirements of Section 201.76 (b) but are treated as Section 201.76 (e) options.

In some cases, an otherwise Qualified IRS option plan will include or be "tandemed" to a plan calling for the award of stock "appreciation rights" at the expiration of the option. Such rights permit employees to allow their options to expire, but receive a payment in cash or stock equivalent to the increase in market value over the option price. (In effect, to receive the benefits of a Stock Option without any investment on the part of the employee). The attachment or inclusion of stock appreciation rights to an otherwise 201.76 (b) option converts it to a 201.76 (e) option.

"Tandem" Stock Option Plans are fairly common in industry. Under a tandem plan, an employee would receive two options covering the same number of shares - one option being a Qualified Option and the second, a Non-Qualified option. The employee can elect to exercise all or portions of either option, but such exercise will cancel an equal number of shares covered by the other option agreement. Where the tandem options are both issued at 100% of Fair Market Value on the date of grant, the plan will generally meet the requirements of 201.76 (b). However, if the non-qualified option is issued at less than 100% of fair market value, both options are deemed to be covered by Section 201.76 (e).

6.105 Sales, Commission and Production Incentive Plans - Section 201.77

Plans not included in collective bargaining agreements and which directly reflect the performance of covered employees in the form of sales or production are subject to Section 201.77 of the regulations.

In general, plans which are based on measurement of corporate or divisional profits cannot qualify as a sales incentive plan, even though salesmen may be covered by such a plan. In some cases, however, a plan covering salesmen may be based on measuring the profitability of sales. Such plans usually provide for the transfer of products to the sales department at a standard or manufacturing cost price and measure the profits or sales by subtracting from Gross Sales, the transfer price plus selling expenses (such as salesmens salaries, expenses, advertising costs, etc.). In cases where a plan is designed to measure sales profitability as opposed to company or division profits. such plans can qualify as a Section 201.77 sales plan.

EXHIBIT I TO CHAPTER VI

INSTRUCTIONS TO FORM S-82

COMPLIANCE INVESTIGATION WORKSHEET - EXECUTIVE AND VARIABLE COMPENSATION

7.1 PURPOSE

This worksheet is intended to serve as an audit tool in investigations where items of compensation governed by the rules of Subpart F of the Pay Board's Regulations are present.

7.2 WHEN TO USE

This worksheet must be used in all cases involving Executive and Variable Compensation. It is to be completed by the investigator and is not to be made available to the firm under investigation.

7.3 VERIFICATION

Verification of all computations shown on the worksheet should be supported in the case file.

7.4 SPECIFIC INSTRUCTIONS

PART I - Identification

Items 1, 2, 3 - Self explanatory

PART II - General

Item 4 - Self explanatory

Item 5 - If yes obtain a copy and include in the case file.

Item 6 - The applicable block or blocks should be checked. If the firm claims it has a productivity program, check block (c) and complete Part VI.

PART III - Stock Options

If the firm has two or more stock option plans which qualify for separate aggregate share limitations complete this part for each plan separately

Only if one of such plans was in existence on November 14, 1971, for less than one full fiscal year, will they qualify for such separate treatment.

A new plan adopted on or after November 14, 1971, where another plan existed on November 14, 1971, whether or not such other plan is terminated is treated as a replacement plan.

Item 7 - Self explanatory

Item 8 - If no to a, b, c, or d, the plan does not meet the provisions outlined in the regulations. Consequently, Part IX which apportions the amounts chargeable to wages and salaries must be completed.

Item 9 - Self explanatory

Item 10 - The aggregate share limitation for stock option plans which meet the requirements of Section 201.76 (b) is computed here.

Item 10 (a), (b) and (c) - Self explanatory

Item 10 (d), (e), (f) and (g) - These items are used to compute the aggregate share limitation for fiscal years which began prior to November 14, 1972.

Item 10 (h), (i), (k) and (l) - These items are used to compute the aggregate share limitation for fiscal years which began on or after November 14, 1972. If more than one such fiscal year is included in the investigation, the averages in (j) must be computed separately for each fiscal year.

Item 11 - Show computation for current fiscal year and two immediately preceding fiscal years ended after November 14, 1971. Any excess options are not to be charged against wages and salaries.

Item 12 - Show computation for current fiscal year and two immediately preceding fiscal years ended after November 14, 1971. The computed value would be considered a charge to wage and salaries. Separate computations should be made for the grant of options and for the exercise of options. See Section 201.76 (f) for valuation of such options. (Exclude the exercise of any options granted prior to December 17, 1971).

PART IV - Incentive Compensation

If the firm has two or more incentive compensation plans, compute the allowable amount for each plan separately.

Item 13, 14, 15, and 16 - Self explanatory

Item 17 - If a D & O was issued it will state what the allowable amount should be.

Item 18 - Show computation with respect to each plan or practice year for which payment was made after November 14, 1971. If any award is deferred, payment is considered to have been made on the date of award. Use the formulas outlined below to compute the allowable amounts.

Allowable Amount for
First Plan or Practice Year - (Base Year Amount) X (105.5)

Allowable Amounts for Each
Succeeding Plan or Practice
Year = (Allowable Amount for the Previous Plan or Practice Year) X (105.5) X (Adjustment Factor)

The formula for arriving at the adjustment factor is as follows:

$$\frac{(\text{Base Unit Salary} + \text{Base Unit Salary Additions}) - \text{Base Units Salary Deletions}}{\text{Base Unit Salary}}$$

Item 19 and 20 - Show each plan or practice year separately.

Item 21 - In determining whether an excess exists the allowable amount is the lesser of the amounts shown in Item 18 or Item 20.

PART V - Sales or Commission plans or practices and certain Production Incentive programs.

Item 22 - Self explanatory

Item 23 - If the plan has remained the same, i.e. no changes at all, the plan can operate according to its existing provisions. If no is checked, the balance of this part does not have to be completed.

Item 24 - Self explanatory

Item 25 - If item 23 is checked yes and the date of the change is prior to the beginning of the current plan, practice or program year this item is to be completed.

Item 25 (a) - This is to be completed for the year of change by using actual volume or production figures for that year. If an excess is determined, it is considered an increase in the control year paid. That is, at the point in time the excess begins is when it is considered an increase in wages and salaries.

Item 25 (b) - This is completed for each plan, practice or program year, including the current year, following the year of change. The investigatory must estimate the sales volume or production output if the year is open or establish the exact amounts if the year is closed. The amounts will then be used to determine whether an increase results under the new plan. Any excess is treated in the same manner as in 25 (a).

Item 26 - If item 23 is checked yes and the date of the change is in the current plan, practice or program year, this part is to be completed.

Item 27 - Self explanatory

Item 28 - The amount paid or awarded should be shown for each plan, practice or program year since the establishment of the plan, practice or program.

Such amounts are increases in wages and salaries in the control year paid or awarded.

Item 29 - Self explanatory. It yes to "B" attach a copy of the decision and order.

PART VI - Productivity Programs

This part is to be completed if the firm claims to have such a program under Section 201.61.

Items 30, 31, and 32 - Self explanatory

PART VII - Job Perquisites

Items 33 and 34 - Self explanatory

Items 35, 36, and 37 - If yes is checked, include control year or years changes made in or apportionment occurs.

PART VIII - Officers Wages and Salaries

Item 38 - To be completed for elected officers only.

Column (a) is to show base salary at the time of investigation.
Column (b) is to show base salary for last payroll period of immediately preceding control year.
Column (c) is to show percentage change unless increase is the result of a bonafide promotion. In addition, on separate schedule show the same information for the immediatley preceding control year.

Item 39 - Self explenatory

Item 40 - State the classification of the employees in the AEU in which the officers listed in Item 38 participate (e.g. officers only, all executives, all salaried). Include the title and salary range applicable to the lowest paid employee in this AEU.

Item 41 - The purpose of this question is to determine the appropriations of the AEU designation.

Items 42 and 43 - Self explanatory

PART XI - AEU

Item 44 - If investigation covers AEU's in addition to the one described in Item 40, check yes and enter number.

Item 45 - Circle the item numbers for amounts to be apportioned to all AEU's covered by the investigation.

Item 46 - State the nature and amount of items to be apportioned to each AEU covered by the investigation and identify each. Show separately for each AEU.

Item 47 - P.B. 3's or 3A's must be attached for each AEU for the current control year and the immediately preceding control year.

Item 48 - Self explanatory

PART X AND XI - Self explanatory

Economic Stabilization Program

Compliance Investigation Worksheet - Executive and Variable Compensation

(Section references are to the Economic Stabilization Regulations. Use Part XI if more space is needed.)

Part I.—Identification

1 Name and address of firm

2 SIC code (if available)

3 Principal product, activity or service

Part II.—General

4 Check the applicable box to show the form of the organization:
a. Corporation ☐ b. Partnership ☐ c. Sole proprietorship ☐

5 Have any pay rulings or decisions been issued to this employer, or are any pending? . . . . ☐ Yes ☐ No
If "Yes," describe.

6 Check the appropriate boxes below and complete the applicable sections of this worksheet.
- a. The firm issued stock options . . . . ☐
- b. The firm awards incentive compensation as defined in Section 201.72(e) . . . . ☐
- c. The firm has a productivity incentive program as defined in Section 201.61 . . . . ☐
- d. The firm pays variable compensation as defined in Section 201.77 . . . . ☐
- e. The firm provides job perquisites as defined in Section 201.72(d). . . . . ☐

Part III.—Stock Options (Complete only if the firm has a stock option plan and has issued stock options since December 16, 1971. If the firm has more than one stock option plan, see instructions.)

7 Does the employer's stock option plan or any of the options granted under the plan since December 16, 1971, meet the definition of:
- a. An existing contract, pursuant to Section 201.72(f)? . . . . ☐ Yes ☐ No
- b. A pay practice previously set forth, pursuant to Section 201.72(g)?. . . . . ☐ Yes ☐ No
- c. If "Yes," to a. or b., explain.

(See Section 201.35, 201.76(c)(4) and 201.78(d) for plans or options meeting the definitions of an existing contract or a pay practice previously set forth.)

8 Does the plan meet the folowing provisions of Section 201.76(b)(1):
- a. Were the stock options granted in writing? . . . . ☐ Yes ☐ No
- b. Does the plan have stockholders' approval? . . . . ☐ Yes ☐ No
  If "Yes," give the date . . . . ▶ ______
- c. Is the maximum number of shares stipulated?. . . . . ☐ Yes ☐ No
  If "Yes," give the number . . . .
- d. Is the option price not less than 100% of fair market value? . . . . ☐ Yes ☐ No
  If "No," explain.
- e. If "No," to a., b., c., or d., check item 9 e, and complete item 11 and Part IX.

9 Check the type of plan below and compute allowable options in item 10.
- a. Existing stock option plan (Section 201.76(b)). Allowable options are computed per Section 201.76(b)(1)(ii) or (iii) or Section 201.76(c)(1), (2), (3) or (4) . . . . ☐
- b. Replacement of existing plan (Section 201.78(a)). Allowable options are computed per Section 201.76(b)(1)(ii) or (iii) or Section 201.76(c)(1),(2),(3) or (4), as applicable to the existing plan. . . . . ☐
- c. Modification or revision of existing plan (Section 201.78(b)). Allowable options are computed in the same manner as in item (b), above . . . . ☐
- d. New plan (Section 201.78(c)). Determine allowable shares from the Decision and Order or appendix B. (See Pay Board Ruling 1972-113 if the firm had a previous stock option plan.) . . . . ☐
- e. The stock option plan does not meet the requirements of Section 201.76(b)(1) . . . . ☐
  (If you check e., also complete item 12 and Part IX.)

Part III.—Stock Options (Continued)

10 Amount of allowable shares under the Economic Stabilization Regulations. (If a new plan or an exception was granted, enter the amount from the Decision and Order.) . . . . ▶ __________

a. Date plan adopted . . . . ▶ __________

b. Corporation fiscal year . . . . ▶ __________

c. Total number of shares available for option under the stock option plan as of December 17, 1971. . ▶ __________

d. For a fiscal year beginning prior to November 14, 1972, list the aggregate number of shares under stock options granted in each of the employer's last three fiscal years ending before November 14, 1971:

1. First year ending before November 14, 1971 . . . . ▶ __________
2. Second year ending before November 14, 1971 . . . . ▶ __________
3. Third year ending before November 14, 1971 . . . . ▶ __________

e. How many shares under option were granted in the fiscal year including November 14, 1971, and granted before December 17, 1971? (These options may be exercised per Section 201.76(a)). . . . . ▶ __________

f. Have options been granted since December 16, 1971 and prior to fiscal year beginning on or after November 14, 1972 ? . . . . ☐ Yes ☐ No

If "Yes," show number of shares by fiscal year. . . . . ▶ __________

g. Compute below allowable shares per Section 201.76(b)(1)(ii) or (c) and enter results in item 11a. 3. for each applicable fiscal year.

h. Have options been granted in a fiscal year beginning on or after November 14, 1972? . . . . ☐ Yes ☐ No

If "Yes," show number of shares by fiscal year. . . . . ▶ __________

i. If "Yes" to item h., above, complete the following for each fiscal year the plan was in existence prior to the year of computation.

FY's Prior to FY of Computation		Options Granted	Number of Employees Participating in Plan Unit
Beginning	Ending		
Totals			

j. Compute averages:

$$\text{options} = \frac{\text{options}}{\text{years}} \; \_\_\_\_\_\_\_\_\_\_, \quad \text{employees} = \frac{\text{employees}}{\text{years}} \; \_\_\_\_\_\_\_\_\_\_$$

k. Show number of employees reasonably expected to receive options for the computation year. . . . . ▶ __________

l. Compute below the aggregate share limitation for the computation year. Enter the results in item 11 a.3. for each fiscal year.

$$\left[\text{Annual average options}\right] \times \left[\frac{\text{Employees to receive options}}{\text{Average number of employees}}\right]$$

11 a. Computation of options exceeding the Economic Stabilization Regulations. (Use a separate column for each fiscal year.)

1. Fiscal year(s) of grant			
2. Number of shares covered by options granted			
3. Number of allowable shares (from item 10 g. or l.).			
4. Excess, if any, of line 2. above, less line 3.			

b. Were options granted for shares in excess of the number allowable under the Economic Stabilization Regs? ☐ Yes ☐ No

Part III.--Stock Options (Continued)

12 If item 9e. is checked, determine the value of the stock options for the fiscal year of the grant and the fiscal year of exercise. Show computations below for each fiscal year, and complete Part IX.

Part IV.—Incentive Compensation (Other than stock options or productivity incentive as defined in Section 201.61 or plans or practices covered by Section 201.77)

(Complete this part for each separate plan or practice if the employer awards incentive compensation, as defined in Section 201.72(a).)

13 a. Is incentive compensation awarded under a plan as defined in Section 201.74? . . . . ☐ Yes ☐ No

If "Yes," attach copy.

b. Is incentive compensation awarded under a practice as defined in Section 201.75?. . . . . ☐ Yes ☐ No

If "Yes," describe method for determining aggregate amount of awards pursuant to the practice, or show the bonus percentage as determined by the formula in Section 201.75(a)(1).

14 Does the plan or practice or any awards made thereunder meet the definitions of:

a. An existing contract? . . . . ☐ Yes ☐ No

b. A pay practice previously set forth?. . . . . ☐ Yes ☐ No

c. If "Yes" to a. or b., explain.

15 What is the plan or practice year?. . . . . ▶

16 If the plan or practice makes awards other than cash, or provides for deferred payments, explain. (See Sections 201.74(c)(1) and (3), or 201.75(c)(1) and (3).)

17 a. Has the employer adopted a new or replacement incentive compensation plan, or revised or modified its existing plan, since November 13, 1971? . . . . ☐ Yes ☐ No

b. Was approval of the plan required under Section 201.78? . . . . ☐ Yes ☐ No

c. If "Yes " to b., has a Decision and Order been received? . . . . ☐ Yes ☐ No

d. If "No " to b. or c., determine if any amounts awarded should be apportioned to wages and salaries, compute the amount in items 18, 19, 20, and 21, and complete Part IX.

18 Compute the allowable amount for each plan or practice year for which an award was made after November 13, 1971 (pursuant to Section 201.74(b) if a plan, or to Section 201.75(b) if a practice).

a. Base year amount . . . . ▶ $

b. Allowable amount for first plan or practice year. . . . . ▶ $

c. The adjustment Factor and allowable amount for each subsequent plan or practice year:

Factor	Amount
	$
	$
	$

Part IV.—Incentive Compensation (Continued)

19 a. Has the employer made awards under the plan or practice after November 13, 1971? . . . . ☐ Yes ☐ No

b. If "No " to a., when does employer expect next awards to be made? . . . . ▶ ____________

c. If "Yes" to a., what was the aggregate amount and date of the award for each plan or practice year? ▶ ____________

d. If there is an amount in c., does it include.

1. Items deferred to a later year?. . . . . ☐ Yes ☐ No
2. Items deferred from an earlier year? . . . . ☐ Yes ☐ No
3. Noncash items?. . . . . ☐ Yes ☐ No

e. If "Yes " to 1., 2., or 3., explain.

20 a. If award made under a "plan," determine for each **plan year** the aggregate maximum amount computed in accordance with the plan formula.

b. If award made under a "practice," determine for each practice year the aggregate maximum amount computed in accordance with the formula in item 13b.

21 If there are amounts in item 19 c., are they more than the amount computed in either item 18 or 20? . . ☐ Yes ☐ No
If "Yes," show amount of excess for each plan or practice year and complete Part IX.

Part V.—Sales or Commission Plans or Practices and Certain Production Incentive Programs (Complete for each separate plan, practice or program.)

22 Prior to November 14, 1971, did the employer have established and in effect a sales or commission plan or practice or a production incentive program covering nonunion employees?. . . . . ☐ Yes ☐ No
If "Yes," and plan or program are in writing, attach a copy; if a practice or a program not in writing, describe method for determining amount of compensation.

23 a. If "Yes " to item 22, has the method of calculating earnings changed since November 13, 1971? . . . . ☐ Yes ☐ No

b. If "Yes " to a., what is the date of change? . . . . ▶ ____________
(If "No " to a., plan may operate per Section 201.77(a)(1).)

24 What is the plan, practice or program year? . . . . ▶ ____________

25 a. If a change initially effects a completed plan, practice or program year, based on actual sales volume or production output for such year:

1. State the aggregate amount of compensation paid or awarded under such changed plan, practice or program. . . . . ▶ $ ____________
2. State the aggregate amount of compensation that would have been paid or awarded had no change in the method of calculating earnings occurred. . . . . ▶ $ ____________
3. If 1. exceeds 2., show amount of excess and complete Part IX . . . . ▶ $ ____________

b. For each plan, practice or program year following the year of initial change, based on actual sales volume or production output for a completed year, and on projected sales volume or production output for the current year:

1. State or estimate the aggregate amounts of compensation paid, awarded or payable under such plan, changed practice or program. . . . . ▶ $ ____________ $ ____________
2. State or estimate the aggregate amount of compensation that would have been paid, awarded or payable had no change in the method of calculating earnings occurred . . . . ▶ $ ____________ $ ____________
3. If 1. exceeds 2., show the amount of excess for each year and complete Part IX . . . . ▶ $ ____________ $ ____________

26 If a change initially effects a cu[illegible] plan, practice or program year, based on projected sales volume or production output for such year:

a. Estimate the aggregate amount of compensation payable under such changed plan, practice or program ▶ $ ____________
b. Estimate the aggregate amount of compensation that would have been payable had no change in the method of calculating earnings occurred . . . . ▶ $ ____________
c. If a. exceeds b. show the amount of excess and complete Part IX . . . . ▶ $ ____________

27 If "No " to item 22, has such a plan, practice or program been established since November 13, 1971? . . . ☐ Yes ☐ No

Part V.--Sales or Commission Plans or Practices and Certain Production Incentive Programs (Complete for each separate plan, practice or program.) (Continued)

28 If "Yes" to item 27, show amount paid or awarded and complete Part IX.............. ▶ $

29 a. If "Yes" to items 26 or 27, was approval required under Section 201.78?........... ☐ Yes ☐ No
b. If "Yes" to a., has a Decision and Order been received?......................... ☐ Yes ☐ No

Part VI.--Productivity Programs

30 Does the employer claim that any or its plans, practices or programs are productivity incentive programs? If "Yes," complete items 31 and 32. ☐ Yes ☐ No

31 Describe method by which compensation under such program is computed.

32 Does such program qualify as a productivity incentive program pursuant to Section 201.61(d)? . . . . . . ☐ Yes ☐ No
If "No," treat as a Section 201.74, 201.75 or 201.77 plan or practice, as applicable, and complete the appropriate part of this form.

Part VII.—Job Perquisites

33 List all items furnished by the employer you consider to be perquisites as defined in Section 201.72(d).

34 List all business expense reimoursement practices of the employer, including mileage reimbursement, club dues payments, etc.

35 Has the employer made any changes in its practices as described in items 33 and 34 (e.g., increasing mileage reimbursement, adopting a tuition reimbursement program, issuing gasoline credit cards, etc.) since November 13, 1971? . . . . ☐ Yes ☐ No
If "Yes," describe.

36 Does employer intend to include the value of such changes in pay adjustment computations?. . . . . ☐ Yes ☐ No
If "Yes," describe.

37 Should any items furnished as job perquisites be apportioned to wages and salaries? . . . . ☐ Yes ☐ No
If "Yes," compute below and complete Part IX.

Pat VIII.—Officers' Wages and Salaries

38 If a corporation, list the corporate officers and information about their salaries in the space below. The percentage in column (c) should be obtained by dividing the total in column (a) by the total in column (b) and subtracting 100%. If the percentage change is the result of a bona fide promotion, write "promotion" in column (c).
If additional space is needed, check the following box and attach list . . . . ☐
Include dollar amounts on such attached list in totals for column (a) and (b).

Name	Title	Current (a)	Base Payroll Period (b)	Percentage Change (c)
		$	$	%
Totals		$	$	%

39 Is the current total base salary more than 5.5% greater than the total base payroll period? . . . . . . ☐ Yes ☐ No
If "Yes," determine the Appropriate Employee Unit (AEU) and complete Part IX. (Part IX should also be completed for the AEU if column (c) for any officer substantially exceeds 5.5%.)

40 Describe the AEU in which corporate officers are currently participating.

Part VIII.--Officers' Wages and Salaries (Continued)

41 Have the corporate officers historically participated in this AEU? . . . . ☐ Yes ☐ No
If "No," explain.

42 What is the control year for this AEU? . . . . ▶

43 How many employees were in the AEU for each control year? ▶ ▶ ▶

Part IX.—Appropriate Employee Units

44 Does this worksheet involve more than one AEU? . . . . ☐ Yes ☐ No

45 Amounts to be apportioned to each AEU were determined from items (circle applicable item numbers)
9e, 12, 17, 21, 25a.3, 25b.3, 26c, 28, 37, 39

46 State the items and amounts identified in item 45 and associate with the AEU. Please describe each AEU. (Use additional pages if necessary.)

47 Prepare and attach a Form PB-3 or PB-3A for each AEU. Number of Forms PB-3 or PB-3A attached . . . . ▶

Part X.—Signatures

48 Investigator	49 Date	50 Total time spent	51 Reviewer	52 Date

EXHIBIT II TO CHAPTER VI

BACKGROUND PAPER-EXECUTIVE AND VARIABLE COMPENSATION CONTROLS

During Phase II, the Pay Board decided that increases in aggregate compensation for units of white collar, management and executive employees should be limited to the same general wage and salary standard as was applicable for other units of employees. However, recognizing that the compensation package for management employees usually included bonuses, stock options and other forms of variable compensation, it was decided that special regulations were required to provide rules governing the operations of such plans. These rules are covered in Subpart F of the Pay Board regulations.

These regulations separate executive and variable compensation from other forms of compensation. The term "executive" is not defined. However, the determination of whether the rules regarding executive and variable compensation apply to an item of compensation does not depend on the individual receiving the compensation, but the type of compensation received. The regulations also do not affect any plans covered by the provisions of a collective bargaining agreement.

Increases in salaries and the cost of perquisites awarded to employees or executives are chargeable to the 5.5% general wage and salary standard for the appropriate employee unit or units to which such employees were assigned by the employer. In addition, salary payments deferred to later years are charged as wages and salaries in the year earned.

INCENTIVE COMPENSATION PLANS AND PRACTICES (Excluding Stock Options) - Sections 201.74 and 201.75

A wide variety of plans are covered, including cash or stock bonus plans whether payable currently or where payments are deferred, phantom stock plans, stock purchase plans, and performance share plans. (These regulations do not cover qualified benefit plans, e.g., IRS qualified pension or profit sharing plans.)

The control concept underlying the regulations is that payments and awards made under such plans or practices during Phase II or III that are consistent with payments made under such plans or practices prior to Phase II, should not be deemed to be increases in wage and salaries. Accordingly, the computation provisions are the heart of these regulations on incentive compensation plans and practices. In essence, the regulations provide that for plans or practices in existence on November 14, 1971, the allowable amount which might be paid as a bonus for the first plan or practice year under Phase II is the amount actually paid in the best of the last three plan years plus 5.5%. Following the recodification hearings, the Pay Board amended the regulations to provide an additional 5.5% increase in the allowable amount in the second plan or practice year and required that the allowable amount be adjusted upward or downward to reflect increases or decreases in plan participants from the base year who are now eligible to receive awards under such plan or practice.

The regulations also permit payments in "excess" of the allowable amount to be made, provided such "excess" payments are charged as increases in wage and salaries. Any excess payments must be distributed pro rata among the appropriate employee units to which plan participants have been assigned.

During Phase II, the adoption of new incentive compensation plans and practices required prior Pay Board approval. In general, the Pay Board approved the adoption of such plans with the condition that payments made under a new plan during the first 12 months of operation are chargeable as increases in wages and salaries for the appropriate employee unit. Modifications or replacements of plans in existence on November 14, 1971, also required Pay Board approval. In general, such changes were approved, subject to the condition that any increase in aggregate compensation resulting from the revision or replacement over that which would have been payable under the prior plan would also be a chargeable increase to wages and salaries.

The standard treatement of new, modified or replacement plans adopted in Phase III has been published in Appendix B of the Cost of Living Council regulations.

STOCK OPTIONS - Section 201.76

The Pay Board decided that no restrictions would be placed on the exercise of options which had been granted prior to the commencement of Phase II. It also decided that stock options that met certain Pay Board requirements - namely, that (1) the option plan must be approved by the stock holders, (2) that the plan must specify the maximum number of shares set aside for option grants, and (3) most importantly, that the plan required options to be granted at an exercise price of no less than 100% of the fair market value on date of grant - would not be deemed to be an increase in salaries since there is no cost to the company for such options either at the time of issuance or exercise of such options. However, since the grant of such options are obviously an inducement to employment, it was decided that a limitation be placed on the number of shares which could be awarded under stock options during each fiscal year of the employer, such number to be consistent with each employers past practice in granting options prior to stabilization.

The original Pay Board regulations covering existing stock option plans which met the Pay Board's requirements established an aggregate share limitation for a fiscal year beginning prior to November 14, 1972, to the number of shares covered by options issued per year during the three fiscal years ending prior to November 14, 1971 - divided by three. Special rules for computing the annual allowance were provided for plans less than three years old and for dormant plans.

As a result of a number of complaints received during recodification hearings, the Pay Board issued new regulations on November 14, 1972, changing the computation of the annual stock option allowance. The aggregate share limitation applicable to fiscal years beginning on or after November 14, 1972, is now based on the annual average number of shares subject to options that were granted during the life of the plan and now further provides that such allowance must be adjusted upward or downward for changes in the number of plan participants.

During Phase II, adoption of a new Pay Board qualified stock option plan required prior Pay Board approval. In general, such approval was granted with the condition that the allowable number of shares that could be granted under options be held to 25% of the aggregate shares authorized under the plan. Replacement or revised plans also required prior approval and in general, the annual allowance for such plans was held to the annual allowance which could have been granted under the prior plan.

The standard treatment of new and modified or replacement plans adopted in Phase III has been published in Appendix B of the Cost of Living Council regulations.

Stock options granted under plans which did not meet the requirements of the Pay Board (usually options which could be purchased at a discount from fair market value on date of grant) are deemed to be increases in wages and salaries. The charge made is an "option premium" equal to 25% of the fair market value of a share as of the date of grant plus the value of the discount from fair market value on that date. At the time of subsequent exercise of such option, a further amount chargeable is the difference (if any) between the fair market value at the time of exercise over the sum of the original 25% premium plus the fair market value at the time of grant. Such charges are apportioned to the appropriate employee unit or units for the plan participants.

SALES COMMISSION AND PRODUCTION INCENTIVE PLANS OR PRACTICES - Section 201.77

These plans, when directly related to the performance of the employees with respect to sales or production output that were established and in effect before November 14, 1971, may continue to operate in accordance with their provisions without reference to the 5.5% wage and salary standard. If a change is made in the plan or practice method of calculating the earnings of any employees covered by such plan or practice, the increases in the aggregate amount of compensation over that payable under the plan or practice before revision is deemed an increase in wages and salaries in the year earned and is apportioned to the appropriate employee unit(s).

During Phase II, the adoption of new sales production or commission incentive plans required prior Pay Board approval. Such approval was generally granted provided, however, that payments under such plan be charged as an increase in wages and salaries.

Appendix B of the Cost of Living Council's regulations provides guidelines for the replacement or modification and adoption of new sales commission and production incentive plans consistent with the standard treatment afforded such plans during Phase II.

NEW ORGANIZATIONS - Section 201.79

Any business or firm established on or after November 13, 1971, was permitted to establish executive or variable compensation plans or practices if within 90 days after the establishment of the business, report was filed with the Pay Board describing such plans. The report was required to demonstrate that the organization of the business entity and the plans or the practices adopted were not for the purpose of circumventing the intent of the wage and salary program and were not unreasonably inconsistent with the intent and purposes of the program or the policies of the Pay Board. Since the regulations did not require Pay Board approval, decision and orders were not issued in response to new organization reports except in situations where a report indicated that a proposed action was unreasonably inconsistent with the regulations.

Section 201.79 also spelled out the rules applicable to changes in organization form resulting from mergers, acquisitions, or reorganizations. In general, the Pay Board took the position that a change in organizational form should not affect the appropriate employee units, plans or practice units or control years unless otherwise clearly required by the organizational change. Allowable amounts for established incentive compensation plans or stock option plans in predecessor organizations were generally allowed to be carried forward into the new organization.

SUMMARY

The regulations covering Executive and Variable Compensation establish limitations as to the "allowable" amounts of payments or awards that can be made under executive and variable compensation plans that are not regarded as increases in wages and salaries. "Excess" payments (except in the case of Pay Board approved stock options) could be made if charged to the general wage and salary standard for the appropriate employee unit(s). Employers could adopt or modify or replace existing plans, but increases in aggregate compensation resulting from such actions are chargeable as wage and salary increases to the appropriate employee unit(s). The regulations in no way attempted to limit the amount of individual salary adjustments or incentive compensation awards - but control only the aggregate payments made pursuant to plans and practices.

Chapter VIII

CASE FILE FORMAT

8.1 INTRODUCTION

In both large survey and individual directed investigations, one of the most necessary steps to insure orderly case preparation and a quick accurate review is a uniform work product. Uniformity has been lacking in the cases submitted to date. The case files received have ranged from barely acceptable to extremely good. Consequently, we ask that the sample case file be the standard for all future wage cases. A uniform product, such as the one we propose, will greatly aid the review programs whether they be at District, Regions, National Office or the Cost of Living Council.

8.11 General

Two completed case files should be submitted for all pay cases. This will enable both National Office and CLC to review the case file concurrently. A retained copy of both locations will also facilitate matters when questions arise at either CLC or N.O. Each case file should be bound in a memo size folder rather than legal size. All inclusions and attachments should be bound (ACCO fasteners or clips) to prevent losses and/or separations either in transit or while being reviewed.

8.12 File Preparation

All future case files should be set up in accordance with the case file outline you received. The best way to familiarize you with the case outline will be step by step.

(1) The initial S-71 and all S-66 updating the case, should be attached on the reverse side of the file cover. S-66 green and yellow copies to be inserted in one copy of the case file. S-66 pink and any other extra copy to be inserted in the other copy of the case file.

(2) Index should encompass all material in the case file report and indicate its location.

(3) Narrative Report (Memo style) (see report in sample file). This will identify the firm investigated and the resolution of the investigation i.e., Violation - No Violation. This memo report is in addition to the short narrative on the final S-66. The format is standard and has been used in almost all investigations.

The report should provide the reviewer with a concise wrap up of investigation as well as the investigator's recommendation.

(4) S-102. All parts are to be completed. If a section does not apply, indicate on form, (i.e., N/A) Where attachments are requested by the form, pinpoint their location in the appropriate section of the case file.

(5) PB-3 or 3A

(6) Workpapers - Should include verification for all information on

  (a) Base salaries - list and method of vertification used.

  (b) Stock options - should include duties of grant, computations, etc.

  (c) Incentive compensation - be sure to include all supporting data.

  (d) Sales or Commissions Plans or Practices

  (e) Job prerequisites

(7) Copy of Plans

  (a) Stocks plans

- (b) Incentive Comp. Plans
- (c) Sales plans
- (d) Productivity plans

(8) Pay Board Q and A's - if any, attach copies.

(9) Memorandums supporting positions if any.

Any other exhibits, proxy statements, annual reports, etc.

All items should be tabed as shown in example and clearly cross-referenced to index.

(10) For investigations other than executive compensation, the above forms should be used and adopted as necessary for the particular case.

HIGHER PRICES INCORPORATED

NO. 1 MARITIME PLAZA

C.L.C. No. 502

Completed March 9, 1973

By:
H. R. Ruby

Address any reply to: 450 Golden Gate Ave.
San Francisco, Calif. 94102

DISTRICT DIRECTOR

INTERNAL REVENUE SERVICE

District Director
Internal Revenue Service
San Francisco, California
ATTN: Assistant to the Director
(Stabilization)

Re: Higher Prices Incorporated
No. 1 Maritime Plaza
San Francisco, California

FINAL - No Violation

Basis for the Investigation

This report is in response to the S-71 requesting an investigation of the executive compensation program of Higher Prices, Incorporated. The Stabilization Investigation Transmittal directs an inquiry into the companies executive compensation plan, including base salary, job perquisites and incentive compensation paid to corporate officers. The ultimate purpose was to gather information to complete the attached Form S-82, to analyze this information, and to determine if the compensation paid to the corporate officers exceeded the amount allowable under the Phase II Regulations.

Results of the Investigation

On March 1st Frank Lyon contacted the subject company and requested the information necessary for the investigation. On March 5, 1973, Fred Fish and Frank Lyon from the Economic Stabilization Program met with Mr. Lloyd Steve of Higher Prices Incorporated, and Mr. Brown of the law firm of Alpha Beta Kapps. The wage information was provided and additional discussion of the stock option plans took place. On March 6th the investiators met with Mr. Lloyd Steve and Mr. Clifford Diamond for the purpose of gathering the information on the stock option plan.

On the basis of the information received, Part II of the S-82 was completed. Exhibit A itemizes the individual officers' salaries. This list was copied from the personnel records of the company which recorded the salary history of the corporate officers.

Parts II and IV were also completed on the basis of the stock option information obtained from the company's records. The Schedule F worksheets itemize the specific grants. In addition, Schedule G contains the reports by the compensation and stock ption committee which designates who the receipients of the options were.

It is important to note that the grants in 1971 were approved in a Decision and Order. (See Schedule B) The total number allowable was also designated as the base year amount for the subsequent two month period. The company did not grant in excess of the allowable amount of options in either 1971 or 1972.

The appropriate employee until which includes the corporate officers, is composed of all salaried employees. There are two thousand employees in this until and the control years run from November to November. In the first control year this until received a 5.3 percent increase in the average hourly wage and a .2 percent increase in qualified benefits. In the second control year the until received a 5.3 percent increase to the hourly rate and a 2.5 percent increase to qualified benefits.

Higher Prices, Incorporated is on a calendar year. Their stock option plan is silent as to time periods. The plan was adopted on August 13, 1971, and the Board of Directors approved a grant of 160,000. The Pay Board allowed this as the maximum amount during a twelve month period from August, 1971 to August, 1972. In this way the Decision and Order implies a plan year to August to August.

Conclusions

The analysis of the salary schedule and the option information provided by Higher Prices, Incorporated indicates that this company has not violated the general wage and salary standard in compensating its corporate officers.

Economic Stabilization Program

Compliance Investigation Worksheet - Executive and Variable Compensation

(Section references are to the Stabilization Regulations. Attach additional sheets if more space is needed.)

.t I – Identification

1. Name and address of firm

HIGHER PRICES Incorporated
1 Maritime Plaza
San Francisco, California

2. SIC code *(if available)*
9 , 10

3. Principal product, activity or service
wood and paper products

Part II -- General

4. Check the appropriate boxes below and complete the applicable sections of this worksheet.
   - (a) The firm issued stock options .... ☒
   - (b) The firm awards incentive compensation as defined in Section 201.72(e) .... ☒
   - (c) The firm has a productivity incentive program as defined in Section 201.61 .... ☐
   - (d) The firm pays variable compensation as defined in Section 201.77 .... ☐
   - (e) The firm provides job perquisites as defined in Section 201.72(d) .... ☒

5. What is the form of the organization? (a) Corporation ☒ (b) Partnership ☐ (c) Sole proprietorship ☐

6. If a corporation, list the corporate officers and salary information in the space below. The percentage in column (c) should be obtained by dividing the total in column (a) by the total in column (b) and subtracting 100%.

If additional space is needed, check the following box and attach list .... ☐
Include dollar amounts on such attached list in totals for columns (a) and (b).

Name	Title	Current (a)	Base Payroll Period (b)	Percentage Change (c)
See attached schedule		$	$	%
at Exhibit A				%
				%
				%
				%
als		$ 1,272,072.	$ 1,293,336.	1.67%

Is the current base salary more than 5.5% greater than the base payroll period? .... ☐ Yes ☒ No
If "Yes," determine the Appropriate Employee Unit (AEU) and complete Part VII. (Part VII should also be completed for the AEU if the current base salary of any officer substantially exceeds a 5.5% increase.)

8. Have any pay rulings or decisions been issued to this employer or are any pending? .... ☒ Yes ☐ No
If "Yes," describe.

Case # 8464 ... A Decision and Order dated July 21, 1972 gives permission to grant 160,000 units during the base period and stated that this shall become the base year amount for a subsequent twelve month period. See exhibit B

Part III – Stock Options *(Complete only if the firm has a stock option plan and has issued stock options since December 16, 1971)*

9. Does the employer's stock option plan or any of the options granted under the plan since December 16, 1971, meet the definitions of:
   - (a) An existing contract, pursuant to Section 201.72(f)? .... ☐ Yes ☒ No
   - (b) A pay practice previously set forth, pursuant to Section 201.72(g)? .... ☐ Yes ☒ No
   - (c) If "Yes" to (a) or (b), explain.

(Plans or options meeting the definitions of an existing contract or a pay practice previously set forth generally will be allowed to operate under Section 201.35.)

10. Does the plan meet the following provisions of Section 201.76(b)(1):
    - (a) Were the stock options granted in writing? .... ☒ Yes ☐ No
    - (b) Does the plan have stockholders' approval? .... ☒ Yes ☐ No
      If "Yes," give the date ▷ ____________
    - (c) Is the maximum number of shares stipulated? .... ☒ Yes ☐ No
      If "Yes," give the number ▷ ____________
    - (d) Is the option price not less than 100% of FMV? .... ☒ Yes ☐ No
      If "No," explain.
    - (e) If "No" to (a), (b), (c) or (d), check item 11(e) and complete item 13 and Part VII.

Form S-82 (2-73)

Department of the Treasury - Internal Revenue Service

11. Check the type of plan below and compute allowable options in item 12.

(a) Existing stock option plan (Section 201.76(b)). Allowable options are computed per Section 201.76(b)(1)(ii) or (iii) or Section 201.76(c)(1),(2),(3) or (4)........................ See statement at exhibit... C.............. ☒

(b) Replacement of existing plan (Section 201.78(a)). Allowable options are computed per Section 201.76(b)(1)(ii) or (iii) or Section 201.76(c)(1),(2),(3) or (4), as applicable to the existing plan.................................... ☐

(c) Modification or revision of existing plan (Section 201.78(b)). Allowable options are computed in the same manner as in item (b), above.. ☐

(d) New plan (Section 201.78(c)) requires approval. Determine allowable shares from the Decision and Order. *(See Pay Board Ruling 1972-113 if the firm had a previous stock option plan.)*.................................... ☐

(e) Other. Check here if the plan is not covered by (a),(b),(c) or (d), above, and complete item 13 and Part VII............ ☐

12. (a) Amount of allowable shares under the Stabilization Regulations. (Show computation on (b) below; if a new plan or an exception was granted, enter the amount from the Decision and Order.)

(1) Date plan adopted ▷ 8-13-71

(2) Corporation fiscal year ▷ calendar

(3) Total number of shares available for option under the stock option plan as of December 17, 1971 ▷ 415,000

(4) List the aggregate number of shares under stock options granted in each of the employer's last three fiscal years ending before November 14, 1971.

(a) First year ending before 11/14/71 ▷ 55,150 See exhibits F and G

(b) Second year ending before 11/14/71 ▷ 13,500

(c) Third year ending before 11/14/71 ▷ 20,250

(5) How many shares under option were granted in the fiscal year including November 14, 1971, and granted before December 17, 1971? (These options may be exercised per Section 201.76(2)) ▷ 0

(6) Have options been granted since December 16, 1971?.................................... ☐ Yes ☐ No

If "Yes," for how many shares? ▷ 53,500

(b) Compute below allowable shares per Section 201.76(b) or (c) and enter in item 13(a)(3) for each applicable fiscal year.

Per Decision and Order dated July 21, 1972 Exhibit B

160,000 shares were allowed in the first of the plan.

13. (a) Computation of options exceeding the Stabilization Regulations. (Use a separate column for each fiscal year.)

(1) Fiscal year(s) of grant..............................	1971	1972	
(2) Number of shares covered by options granted..............	160,000	51,500	
(3) Number of allowable shares (from 12(b), or enter "none" if item 11(e) is checked)............................	160,000	168,000	
(4) Excess, if any (line (2), above, less line (3))...............			

(b) Were options granted for shares in excess of the number allowable under the Stabilization Regulations? ☐ Yes ☒ No

14. If "Yes" to item 13(b), refer to item 11 and check the applicable box below.

(a) Plan is described in item 11(a),(b),(c) or (d). (Excess number of shares are a violation of the Stabilization Regulations. If there is no litigation potential, the firm should be advised that it is in violation and instructed to cancel the options granted for such excess).................................... ☐

(b) Item 11(e) is checked. Determine the value of the stock options *(See Section 201.76(f))*. Show computation and complete Part VII.. ☐

Does Not Apply

Part IV – Incentive Compensation *(Other than stock options or productivity incentive as defined in Section 201.61 or plans or practices covered by Section 201.77)*

(Complete this part for each separate plan or practice if employer awards incentive compensation, as defined in Section 201.72(e).)

15. (a) Is incentive compensation awarded under a plan as defined in Section 201.74?........................ ☒ Yes ☐ No

If "Yes," attach copy.

(b) Is incentive compensation awarded under a practice as defined in Section 201.75?.................... ☐ Yes ☒ No

If "Yes," describe method for determining aggregate amount of awards pursuant to the practice, or enter the bonus percentage as determined by the formula in Section 201.75(a)(1).

16. Does the plan or practice or any awards made thereunder meet the definitions of:

(a) An existing contract? .... ☐ Yes ☒ No

(b) A pay practice previously set forth? .... ☐ Yes ☒ No

(c) If "Yes" to (a) or (b), explain.

---

17. What is the plan or practice year? ▷ 12-31-72

18. If the plan or practice makes awards in other than cash, or provides for deferred payments, explain. *(See Sections 201.74(c)(1) and (3), or 201.75(c)(1) and (3).)*

Phantom Stock Awards

19. Show the computation of the allowable amount, pursuant to Section 201.74(b) if a plan, or to Section 201.75(b) if a practice.

See Decision and Order ....168,000 units Exhibit B

20. (a) Has the employer made awards under the plan or practice after November 13, 1971? .... ☒ Yes ☐ No

(b) If "No" to (a), when does employer expect next awards to be made? ▷

(c) If "Yes" to (a), what was the aggregate amount of the award? ▷ 53,500.

(d) If there is an amount in (c), does it include the following:

(1) Items deferred to a later year? .... ☐ Yes ☒ No

(2) Items deferred from an earlier year? .... ☐ Yes ☒ No

(3) Noncash items? .... ☒ Yes ☐ No

(e) If "Yes" to (1), (2) or (3), explain.

Phantom Stock Awards

21. If there is an amount in item 20(c), is it more than the allowable amount computed in item 19? .... ☐ Yes ☒ No
If "Yes," complete Part VII.

(a) If a "plan," determine the aggregate maximum amount computed in accordance with the plan formula. ▷ non applicable

(b) If a "practice," determine the aggregate maximum amount computed in accordance with the formula in item 15(b).
▷

23. (a) Has the employer adopted a new or replacement incentive compensation plan or revised or modified its existing plan since November 13, 1971? .... ☐ Yes ☒ No

(b) Was approval required under Section 201.78? .... ☒ Yes ☐ No

(c) If "Yes" to (b), has a Decision and Order been received? .... ☒ Yes ☐ No

(d) If "No" to (b) or (c), determine if any amounts paid should be apportioned to wages and salaries, compute the amount below, and complete Part VII.

Part V—Sales or Commission Plans or Practices and Certain Production Incentive Programs *(Complete for each separate plan, practice or program)*

Does not apply

24. Prior to November 14, 1971, did the employer have established and in effect a sales or commission plan or practice or a production incentive program covering nonunion employees? .... ☐ Yes ☐ No
If plan or written program, attach copy. If practice or program, not written, describe method for determining amount of compensation.

25. If "Yes" to item 24, has the method of calculating earnings changed since November 14, 1971? .... ☐ Yes ☐ No
If "No," plan may operate per Section 201.77(a)(1).

26. If "Yes" to item 25, based on project sales volume or production output:

(a) Estimate the aggregate amount of compensation payable under such changed plan, practice or program ▷ $

(b) State the aggregate amount of compensation that would have been payable had no change in the method of calculating earnings occurred ▷ $

(c) If (a) exceeds (b), check following box and complete Part VII. .... ☐

27. If "No" to item 24, has such a plan, practice or program been established since November 14, 1971? .... ☐ Yes ☐ No
If "Yes," complete Part VII.

28. (a) If "Yes" to items 25 or 27, was approval required under Section 201.78? .... ☐ Yes ☐ No
(b) If "Yes" to (a), above, has a Decision and Order been received? .... ☐ Yes ☐ No
(c) If "No" to (a) or (b), above, determine any amount to be apportioned to wages and salaries and complete Part VII.

29. Does the employer claim that its plan, practice or program is a productivity incentive program? .... ☐ Yes ☐ No
If "Yes," complete items 30 and 31.

30. Describe method by which compensation under such program is computed.

31. Does such program qualify as a productivity incentive program pursuant to Section 201.61 (d)? .... ☐ Yes ☐ No
If "No," treat as a Section 201.74, 201.75 or 201.77 plan or practice, as applicable, and complete the appropriate part of this form.

Part VI – Job Perquisites

32. List all items furnished by the employer you consider to be perquisites as defined in Section 201.72 (d).

During 1971 and in the early part of 1972, the company paid for a financial consulting service to several corporate officers, at a total cost of $15,000. This program was discontinued in 1972.

33. List all business expense reimbursement practices of the employer, including mileage reimbursement, club dues payments, etc.

See exhibit D.

34. Has the employer made any changes in its practices as described in items 32 and 33 (e.g., increasing mileage reimbursement, adopting a tuition reimbursement program, issuing gasoline credit cards, etc.) since November 13, 1971? .... ☐ Yes ☐ No
If "Yes," describe.

35. Does employer intend to include the value of such changes in pay adjustment computations? .... ☒ Yes ☐ No
If "Yes," describe.

A portion of the figure in 32 was included in the P.B. 3..

36. Should any items furnished as job perquisites be apportioned to wages and salaries? .... ☐ Yes ☒ No
If "Yes," compute below and complete Part VII.

Part VII – Appropriate Employee Unit (AEU) *(Use additional pages if more than one AEU is involved)*

37. Amounts to be apportioned to this AEU were determined from items (circle applicable item numbers):
7, 9, 11(e), 14(b), 21, 23(d), 26(c), 27 or 36.

38. Identify the item(s) to be apportioned to the AEU and the amount.

See Exhibit E...

39. Describe the AEU against which amounts deemed increases in wages and salaries attributable to either stock options or incentive compensation plans or practices will be charged.

All salaried employees of this company are included in a single unit.

40. If employer is incorporated, do corporate officers participate in this AEU? .... ☒ Yes ☐ No
If "No," explain.

41. Is the AEU the same as the (a) Incentive plan or practice unit? .... ☐ Yes ☒ No
(b) Stock option plan unit? .... ☐ Yes ☒ No

42. Prepare and attach a Form PB-3 for each AEU. Number of Forms PB-3 attached ▷ two

43. If comments, attach additional sheet and check here .... ☐

Part VIII – Signatures

44. Investigator	45. Date	46. Reviewer	47. Date 3-13-73

Form S-82 (2-73)

Department of the Treasury - Internal Revenue Service

GPO 870-119